

Electronic Benefit Transfer (EBT) Project



Request for Proposal for EBT Services

Appendix A, Model Contract

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RFP-OSI-0530-204
Addendum #1

June 13, 2007

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Electronic Benefit Transfer Contract

This Electronic Benefit Transfer (EBT) Contract is entered into by and between the State of California (the State), through its duly appointed Officer identified in Standard Contract Form 213 (NEW 06/03) attached hereto and by this reference incorporated herein and VENDOR NAME & ADDRESS (the Contractor).

Recitals

WHEREAS, the State issued a competitive Request For Proposal entitled EBT RFP-OSI-0530-204 dated XXX (the RFP), to secure a contractor to provide EBT Services in California and its counties; and

WHEREAS, the Contractor reviewed and analyzed the needs and requirements contained in the RFP and submitted its proposal on XXX (the Proposal); and

WHEREAS, the State reviewed and analyzed the Contractor's Proposal, selected the Contractor as the successful respondent to the RFP; and

WHEREAS, the State, in reliance upon the expertise of the Contractor, desires to engage the Contractor to provide the comprehensive services and system necessary to implement EBT Services under the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the promises and mutual covenants below, the parties agree as follows:

1 Definitions

<u>Term</u>	<u>Definition</u>
Acceptance	A Notice from the State to the Contractor that a Deliverable or Service has satisfied the Acceptance Criteria or met the Specifications described in Exhibit A of this Contract, a Data Item Description (DID), and Work Authorization for that Deliverable or Service.
Acceptance Criteria	The Specifications against which Deliverables and Services shall be evaluated as the basis for Acceptance, as described in Exhibit A of this Contract, a DID, and Work Authorization for that Deliverable or Service.

<u>Term</u>	<u>Definition</u>
Acceptance Test(s)	A test that is: (i) managed by the Contractor according to State-approved Acceptance Criteria, at a time and facility, and with participants coordinated by the Contractor; and (ii) performed by the State, Counties, or their authorized agent(s) or third-party contractor(s) to determine whether the Deliverable, Service, or part thereof subject to the Acceptance Test meets the Acceptance Criteria.
Account	A repository of EBT Benefits.
Administrative Equipment	Equipment provided by the Contractor to be used at federal, State, or County Sites for performing Administrative Functions.
Administrative Functions	Transactions, tasks, or activities as defined by the Detailed System Design to manage and update information contained in the EBT System. (Examples include, but are not limited to, card printing and card issuance, Personal Identification Number [PIN] selection and change, client searches, demographic additions, benefit additions/voids, and balance inquiry from Point-of-Sale [POS] devices.)
ARU (Automated Response Unit)	A computer peripheral that accepts data from touch-tone telephones and responds with recorded voice commands and information.
ATM (Automated Teller Machine)	An electronic hardware device designated by a Retailer to accept Cards that, when activated by a Cardholder through the use of a magnetic stripe on a Card, are capable of automatically dispensing United States currency directly from such device and responding to balance inquiries.
Benefit(s)	Aid authorized by a County or the State according to the requirements of the Food Stamp Program, California Work Opportunity and Responsibility to Kids (CalWORKs) Program, General Assistance Program, or other program included in the System.
Business Day	All weekdays on which the Federal Reserve Bank of New York is open.
Card	A magnetic stripe card used to access Benefits, goods, or Services.
Cardholder	An individual who has been issued or authorized to use a Card.

<u>Term</u>	<u>Definition</u>
Case	A single beneficiary unit with a Benefit from one or more programs.
Case Month	A calendar month in which a Benefit is posted to a Case.
Caseload	The number of California Cases each Case Month.
Charges	Amounts to be paid by the State to the Contractor under this Contract, including Cost Per Case Month (CPCM), fees, and costs described below in Exhibit B .
Clients	The applicants for or recipients of a Benefit. The term “Clients” means the same as the term “Recipients.”
Confidential Information	Various trade secrets and information of each party that either the Contractor or the State desires to protect against unrestricted disclosure including without limitation State non-publicly available Data, non-public Specifications, Software, State security data, any non-public information or documentation concerning either party’s business or future products or plans that are learned by the other party during the performance of this Agreement, information characterized as confidential under applicable State administrative policies, and information that is designated as confidential by the disclosing party and, subject to Section 15.5 of this Contract, that may be exempt from disclosure to the public or other unauthorized persons under applicable State or federal statutes. The following are hereby designated State Confidential Information: Client personal information, including but not limited to names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, and law enforcement records; and such other Confidential Information as is described in this definition.
Contract	The agreement by and between the State and the Contractor, inclusive of all Exhibits and other documents as described herein.
Contractor Project Manager	The individual chosen by the Contractor with project management responsibilities for the Contractor.
Conversion	The process of migrating California EBT Data from the Legacy System to the System.
County, Counties	A California County.
CPCM (Cost per Case Month)	The fixed fees listed in Exhibit B of this Contract.

<u>Term</u>	<u>Definition</u>
Cure Notice	The Notice which is provided by the State to the Contractor and which initiates the time period for the Contractor to cure its breach or default.
Customer Service	Service provided by the Contractor to Cardholders, Retailers and State, county, and federal users in which the Contractor: (i) responds to Cardholder and Retailer inquiries, (ii) corrects Deficiencies, and (iii) resolves disagreements between participants.
Cutover	The timeframe in which all data is migrated, EBT operations are switched from one contractor to another, and System Acceptance has been given.
Data	The State's or Counties' records, Client information, files, forms, and financial, statistical, personal, personnel, technical or other data and other information that will be processed by the Software or that originates from or is provided by the State or Counties in connection with this Contract.
DID (Data Item Description)	The document describing Acceptance Criteria applicable to a Deliverable.
Days	Calendar days, unless otherwise indicated in this Contract.
Deficiency, Deficiencies	A failure of a Deliverable or Service, or an omission, defect, error, or inadequacy in a Deliverable or Service, causing it not to conform to applicable Specifications.
Deliverable(s)	Any materials which are made, conceived, provided, generated, or developed by the Contractor and which are described (i) as Deliverables in Exhibit C of this Contract; (ii) as deliverables, sub-deliverables or Reports in Exhibit A of this Contract; and (iii) all designs, structures, and models required during the course of rendering the Services.
Delivery Date(s)	The date(s) described in the Accepted Transition Plan for the delivery of the Deliverables and Services to the State.
DSD (Detailed System Design)	The Deliverable that contains all functional and technical Specifications and program requirements of the System.

<u>Term</u>	<u>Definition</u>
Development(s)	Any materials, including but not limited to all Deliverables, designs, drawings, technical data or design documents, reports, memoranda, studies, plans, formulas, compositions, processes, specifications, notes, statements, artwork, techniques, Software (including data and related documentation), exhibits, and any other documents or materials that are: (i) made, conceived of, or developed, in whole or in part, by the Contractor or its subcontractors in its performance of Services; or (ii) modifications made by or on behalf of the Contractor to the Licensed Materials (but not the Licensed Materials themselves).
DGS	The California Department of General Services.
Documentation	All Systems, operations, and technical writings and user manuals (or other media) used in conjunction with the System, in whole and in part.
EBT	Electronic Benefit Transfer.
EBT Host	The central repository for all EBT Account and Cardholder Data.
Eligibility System	A County or State consortium-based computer system that will send and receive Data over an Interface to the System.
Enhancements	Updates, upgrades, additions, changes to, or new releases, in whole or in part, for the System.
Equipment	Hardware provided under this Contract (including but not limited to Administrative Equipment and POS equipment), by the Contractor or the State for the System, and all software, equipment and physical materials required for and associated with its operation, as described in Exhibit A and Exhibit D of this Contract.
Execution Date	The date on which the Contract has been approved by the Food and Nutrition Service (FNS), executed by the Contractor and the State, and approved by the DGS.
File	A collection of related data records that is treated as a unit and that is provided electronically for the exchange of information.
FNS	The Food and Nutrition Service of the United States Department of Agriculture.
Functional Demonstration	A presentation of the System's EBT processing capabilities from the point of transaction entry through authorization, settlement, and funds movement.

<u>Term</u>	<u>Definition</u>
Go/No-Go Decision Point(s)	The point(s) in statewide Transition as identified in the Project Workplan at which the readiness of the Contractor to continue with Transition is assessed and, if applicable in the State's judgment, decided by the State.
Install(ed)	Equipment that has been delivered to and made operational at the Site for which it was designated in accordance with the Transition Plan and has been demonstrated by the Contractor as capable of performing according to the applicable functional requirements.
Installation Date(s)	The date(s) in the Project Workplan for completing installation of Equipment.
Interface(s)	The Equipment and Software to be developed by the Contractor for transmitting Data between the System and other computer systems, as described in Exhibit A of this Contract.
Key Staff	Those Staff identified in Exhibit A of this Contract and the Staffing Plan of the Project Management Plan, whose responsibilities include Project administration, management, and operational decision making.
Legacy System	The EBT system or services being replaced by the System.
Letter of Credit	The Letter of Credit described in Section 11.1 and Exhibit I of this Contract.
Licensed Materials	The documents, software (including object code, and any manuals associated therewith), Documentation, ARU system software, training materials, and any other documents or materials that are: (i) owned by the Contractor, its Subcontractors or other parties and developed prior to the execution of this Contract; (ii) provided by the Contractor to the State or used by the Contractor to perform the Services; and (iii) used as the basis for or as part of any Development.
Marks	The State's name, trademarks, service marks, or any appropriate symbols, logos, or other designs that are identified with the State under this Contract.
Notice	A written document given by one party to the other in accordance with Section 20.29 of this Contract.
Ongoing Operations	The period following Transition during which the Contractor provides EBT Services for maintenance on and operations of the System as required by the Contract.

<u>Term</u>	<u>Definition</u>
Performance Standards	The standards the System and Services shall meet as described in this Contract and applicable laws and regulations.
PIN (Personal Identification Number)	A four character numeric code issued to or selected by a Cardholder, which must be utilized by the Cardholder in conjunction with a Card to initiate a Transaction.
Priority Levels	The levels of prioritization for Deficiencies and the associated descriptions of such Deficiency levels, as described in Section 11.7.1, Table 5 of this Contract, including Priority Level 1, Priority Level 2, Priority Level 3, and Priority Level 4.
POS (Point-of-Sale)	A device used to store, process, and accept EBT transactions at participating retailers.
Project	The planned undertaking regarding the entire subject matter and the terms of this Contract, and the activities of all parties related to the System.
Project Workplan	The overall plan of activities for the Project, and the delineation of Services, tasks, activities, and events to be performed and Deliverables to be produced with regard to the Project. The Project Workplan shall be incorporated into the Contract upon mutual written agreement.
Property	Real and personal property owned by the State or County.
Quest® Operating Rules	EBT operating rules promulgated by the National Automated Clearing House Association Electronic Benefits Services Council.
Reconciliation	The means by which the Contractor provides the Counties and the State with the daily financial position, both in terms of Client-initiated transactions from the previous accounting cycle that are being settled, and the outstanding value of the Client Benefits remaining on the EBT Contractor's database. The reconciliation process is intended to validate the daily Settlement amount and the ending database value.
Report(s)	A collection of data in a prescribed format provided either electronically or in hard copy by the Contractor to the State or County regarding Project activities, events, or Services.
Resolution	The condition when a Deficiency causing a disrupted function is resolved. A Resolution is a permanent fix. An alternative is no longer required or a permanent replacement has been provided.

<u>Term</u>	<u>Definition</u>
Retailer	A person or entity, including without limitation a merchant, check casher, group home, housing authority, cash access location, or other organization, that has either entered into a Retailer Agreement with the Contractor to accept Cards for purchases of goods or services, cash withdrawals or balance inquiries, or accepts Cards for same through agreement with a Third-Party Processor who has entered into a Third-Party Processor agreement with the Contractor.
Retailer Agreement	A written agreement between the Contractor and a Retailer.
Retailer Equipment	The hardware, software, and supplies, including peripheral devices necessary to enable Retailers to perform EBT transactions including, without limitation, POS devices, PIN pads, printers, power cords, interconnecting cables, and other components necessary to make the Equipment operational.
Schedule	The dates described in the Project Workplan for deadlines for performance of Services and other Project events and activities.
Service(s)	The tasks and activities provided by the Contractor in support of the obligations and responsibilities required by this Contract to implement and operate the System, including Project management and oversight of all Deliverables.
Settlement	The process by which the Contractor provides reimbursement for client-originated transactions that occurred at retailers and/or ATM networks.
Settlement Day	The period between cut-off times established by an issuer (as defined by the Quest [®] Operating Rules) for Settlement.
Site(s)	Location(s) where Equipment is installed.
Software	Software in source and object code format for: (i) application software or operating system software developed by the Contractor or a Third-Party licensor for the System as a Deliverable; (ii) Interfaces; (iii) Enhancements; and (iv) Developments.
SOW (Statement of Work)	Exhibit A of this Contract, attached hereto and incorporated by this reference, describes Services to be provided by the Contractor.

<u>Term</u>	<u>Definition</u>
Specifications	A statement, description, account, or listing that prescribes materials, elements, dimensions, or workmanship for the System or a component of the System and as provided in the Performance Standards; Exhibit A of this Contract; Exhibit J of this Contract; the Deliverables including, but not limited to, the Detailed System Design; the Acceptance Criteria; manufacturers' published specifications; the Documentation; or applicable portions of the Quest [®] Operating Rules. The Specifications are incorporated into the Contract by this reference.
Staff	The Contractor's employees, subcontractors, and agents, and their employees and contractors, who will provide the Services on behalf of the Contractor.
State Materials	The tools, documents, and materials owned by the State or a County and made available to the Contractor under this Contract.
State Project Director	The individual chosen by the State with day-to-day management responsibilities for the Project.
Subcontractor(s)	A person, partnership, company, or other entity, excluding Retailers, with which the Contractor has entered into a contract to provide Equipment or perform Services under this Contract on behalf of the Contractor, that are specific to or modified for the requirements of this Contract.
System	The complete collection of Software, Services, and Equipment, integrated and functioning together as a system and performing the functionality and Services required by this Contract.
Third-Party Processor	An organization, other than an issuer (as defined by the Quest [®] Operating Rules), or Retailer, that: (i) provides services as an independent sales organization; (ii) provides encryption support; and (iii) acts as a network or processing switch; or (iv) is a processor as defined by the Quest [®] Operating Rules.
Transaction Processing Platform	All processing components that are required for the successful end-to-end acquiring, switching, processing, and settlement of EBT transactions, and are within the Contractor's reasonable span of control or influence.
Transition	The period of time that is prior to the Ongoing Operations and that is required to implement all System functionality and EBT processes contained in Exhibit A of this Contract, and, if applicable, to migrate all EBT Data as required by this Contract.

<u>Term</u>	<u>Definition</u>
Transition Services	The Contractor tasks and activities necessary to implement all System functionality and EBT processes contained in Exhibit A of this Contract, and, if applicable, to migrate all EBT Data as required by this Contract.
Uptime	The time the Transaction Processing Platform is available for productive work, excluding scheduled downtime for maintenance Services.
User Acceptance Tests	The Acceptance Tests described as such in Exhibit A of this Contract.
Work Authorization	A written form used in accordance with the terms of Section 1 of this Contract.

2 Scope

The Contractor shall establish, operate and maintain a comprehensive EBT System as required by this Contract.

3 Term

3.1 Approval

This Contract is of no force or effect until the Execution Date. The Contractor may not commence performance prior to the Execution Date.

3.2 Initial Term

The initial term shall begin on the Execution Date and shall continue for seven (7) years thereafter, unless terminated earlier or extended as provided herein. The State reserves the option to extend the initial term for three (3) additional periods of one (1) year each upon 180 Days prior Notice to the Contractor of its intent to extend this Contract. The rate(s) for the additional three (3) one (1) year periods shall be as specified in Exhibit B of this Contract, or less. The Work Authorization process shall be used to effectuate any extension of the term of this Contract.

4 Financial Matters

4.1 Payment

Unless otherwise specified, payment will be made in accordance with State of California Government Code Sections 927 et seq., as applicable. Payment shall not be due until the later of: (i) the date of Acceptance of Deliverables or Services; or (ii) receipt of an accurate invoice.

4.2 Invoices

~~No invoices shall be submitted prior to State Acceptance of~~[Invoices for](#) Transition Services [may be submitted in accordance with the schedule contained in Contract Section 4.2.8.](#) Upon Acceptance of Transition Services, invoices shall be submitted the month following the month in which Charges are incurred. The Contractor shall not submit invoices more frequently than monthly.

4.2.1 Deadline for Submission

In no event shall the Contractor submit invoices later than 18 months following the date Charges were incurred. The State will not pay any invoice submitted more than 18 months after the date Charges were incurred.

4.2.2 Submissions

The Contractor must submit an original invoice and two (2) copies which shall specify the amount due and in which the Contractor has certified that Services or Equipment required under this Contract conform to the requirements set forth in this Contract. In addition, the Contractor shall provide an electronic copy (in a State-approved format) of each invoice submitted. Invoices payable by the State shall be submitted to:

Office of Systems Integration
Attention: Accounting Office
P.O. Box 138014
Sacramento, CA 95813-8014

4.2.3 State Project Director Approval

All invoices submitted must meet with the approval of the State Project Director or his or her designee prior to payment.

4.2.4 Inclusion of Contract Number

All invoices, bills of lading, shipping memos, packages, and any other form of correspondence shall refer to this Contract by number plus any unique identifier generated by the State on a Work Authorization.

4.2.5 Information Required

Invoices shall account for each billable item, description, and cost. Invoices shall account for each billable item by County, State and summary total levels. Additional invoice descriptions may be mutually agreed upon by the State and the Contractor.

4.2.6 Incorrect Invoices

The Contractor shall make every effort to reconcile incorrect invoices in a timely manner, not to exceed 30 Days from Notice by the State of a discrepancy. The State shall withhold payments for disputed amounts from invoices until the discrepancies have been resolved.

4.2.7 Work Authorizations

Work Authorizations shall be billed monthly in arrears, using the rates provided in Exhibit B of this Contract. No invoice for Work Authorizations will be due and payable by the State until Acceptance of the Services provided.

4.2.8 Invoicing of Transition Costs

4.2.8.1 Invoicing Schedule

~~Upon State Acceptance of Transition Services, the~~ The Contractor may submit an invoice for payment of ~~any Charges~~ Transition Services provided in Exhibit B of this Contract in accordance with the following schedule:

<u>Deliverable/Milestone</u>	<u>Invoice Submission Date</u>	<u>Payment Amount</u>
<u>Project Workplan</u>	<u>Upon Acceptance</u>	<u>5 percent of Transition Services Charges</u>
<u>Statewide Transition Plan</u>	<u>Upon Acceptance</u>	<u>5 percent of Transition Services Charges</u>
<u>Detailed System Design</u>	<u>Upon Acceptance</u>	<u>5 percent of Transition Services Charges</u>
<u>Master Test Plan</u>	<u>Upon Acceptance</u>	<u>5 percent of Transition Services Charges</u>
<u>Acceptance of User Acceptance Test</u>	<u>Upon Acceptance</u>	<u>10 percent of Transition Services Charges</u>
<u>Acceptance at Go/No-Go Decision Point</u>	<u>Upon Acceptance</u>	<u>20 percent of Transition Services Charges</u>
<u>Completion of Transition</u>	<u>Upon Acceptance</u>	<u>Remaining Transition Services Charges including amounts withheld in accordance with Contract Section 4.2.8.2</u>

4.2.8.2 Invoicing Withholds

As required by law, the State will withhold ten (10) percent of each invoice submitted for Transition Services Charges, with the exception of the Completion of Transition milestone.

4.2.9 Invoicing of CPCM

Each calendar month of Ongoing Operations, following State Acceptance of the Transition Services, the Contractor may submit an invoice for payment of the CPCM for each food stamp, cash assistance, or combined Case that had a Benefit posted to the Client Account that month. Monthly billings to the State shall be based on the CPCM in

the pricing tier in Exhibit B of this Contract, which corresponds to the total actual number of Cases on the System statewide for the month being invoiced.

4.3 No Increases

The Contractor shall not increase the amounts due from the State under this Contract for all Services and Deliverables except those increases that may result from Work Authorizations agreed to by the State and the Contractor in accordance with Section 1 of this Contract.

4.4 Interoperability

In accordance with the Federal EBT Interoperability and Portability Act of 2000, the State agrees that it will seek federal reimbursement for Contractor costs associated with the switching and settlement of interstate food stamp transactions and designate the Contractor its fiscal agent for purposes of seeking reimbursement of such costs in accordance with the FNS formula. The parties agree that any interoperability costs associated with the switching and settlement of interstate food stamp transactions that are not 100 percent reimbursed by federal financial participation will not be billed to the State. Except for the fees provided in Exhibit B of this Contract and the foregoing, the Contractor shall not charge the State or Clients a fee for interstate or intrastate EBT transactions. In the event the Federal EBT Interoperability and Portability Act of 2000 is subsequently repealed or funding for the purposes of the Federal EBT Interoperability and Portability Act of 2000 is not appropriated, the State shall have no further obligation for reimbursement of Contractor costs associated with the switching and settlement of interstate food stamp transactions other than the fees provided in Exhibit B of this Contract.

4.5 Contingency of Funds

4.5.1 Appropriation of Funds

Financial obligations of the State payable in fiscal years subsequent to the year in which this Contract is approved are contingent upon and subject to funds for that purpose being appropriated, allotted, and otherwise made available. The State shall provide the Contractor Notice as soon as the unavailability of funds becomes known to the State Project Director.

4.5.2 Availability of Funds

Payment pursuant to this Contract, whether in whole or in part, is subject to and contingent upon the continuing availability of federal and State funds for the purposes hereof. If such funds, or any part thereof, become unavailable as reasonably determined by the State, or if the funds the State relied upon to establish or continue this Contract are withdrawn, not appropriated, reduced, or limited in any way or if additional or modified conditions are placed on such funding, the State in addition to its other remedies, may:

- a. Issue a stop work order for this Contract or the portion affected thereby.

- b. Issue a Work Authorization to the extent the State determines is necessary.
- c. Five (5) Days after providing Notice, immediately terminate this Contract, in whole or in part, under Section 19.1.1 of this Contract and make payment to the Contractor as provided in Section 19.8.3 of this Contract as a termination for convenience.

4.6 Transportation Costs and Other Fees or Expenses

No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in this Contract.

4.7 Taxes

Unless otherwise required by law, the State of California is exempt from federal excise taxes. The State will only pay for any State or local sales or use taxes on the Services rendered or Equipment supplied to the State pursuant to this Contract. The prices listed in Exhibit B of this Contract, include all applicable federal, State, and local taxes and duties in existence as of the date this Contract is submitted to the DGS for approval.

4.8 Contractor Expenses

The consideration to be paid the Contractor, as provided herein, shall be in compensation for all of the Contractor's expenses incurred in the performance hereof, including without limitation, travel and per diem, unless otherwise expressly agreed to in writing by the State Project Director prior to the expenditure of such funds.

4.9 Most Favored Customer

Should the Contractor, following the Execution Date, agree to provide similar Services to any other customer for a fee, cost, CPCM, or price more favorable than the Charges specified in this Contract, then the State shall be permitted the benefit of such more favorable fees, costs, CPCMs, or prices as of the date they became available in such other agreement; provided, that the State makes written request therefor; and provided further, that the State agrees in such request to accept any less favorable terms.

4.10 Overpayments to Contractor

The Contractor shall promptly refund to the State the full amount of any erroneous payments, incorrect payments, or overpayments upon determination by the Contractor or upon receipt of Notice from the State Project Director.

4.11 Credits and Right to Set Off

Any credits due the State under this Contract may be applied against the Contractor's invoices with appropriate information attached, upon giving of prior Notice required herein, if any, by the State Project Director to the Contractor. The State shall have the right to set off any amounts owed to the Contractor against any damages or charges assessed by the State against the Contractor.

4.12 Advance Payments Prohibited

No payments in advance of or in anticipation of Services or Equipment to be supplied under this Contract shall be provided by the State.

4.13 Payments to Subcontractors

Money paid to the Contractor by the State shall be dispersed to its Subcontractors after receipt of the money in accordance with the terms of the subcontract. Upon final payment to the Contractor, full payment to the Subcontractors shall be made, provided that there are no bona fide disputes over the Subcontractor's performance under such subcontract.

4.14 Reduction in Price

If there is a reduction in the work or Services provided to the State by the Contractor, there shall be a corresponding reduction in the Charges the State pays to the Contractor for such work or Services.

5 Project Management and Scope

5.1 Overall Responsibilities of Contractor

The Contractor is responsible for all tasks, Services, and Deliverables required for Conversion to, and Ongoing Operations of, the System, to accommodate Benefit programs, as described in this Contract.

5.2 Programs and Issuance Methods

5.2.1 Programs

The State initially intends to implement the State programs described below with the System. However, the State reserves the right to add, modify, and delete other programs that are or may be supported by the System at any time on Notice to the Contractor and in accordance with the Work Authorization process, which may or may not incur costs to the State. The System shall be designed to implement the following programs:

- a. Federal Food Stamp Program (federally funded)
- b. California Food Stamp Program (state funded)
- c. Temporary Assistance for Needy Families block grant program, known as CalWORKs (optional to Counties)
- d. General Assistance/General Relief program (optional to Counties)
- e. Cash Assistance Program for Immigrants
- f. Refugee Cash Assistance/Entrant Cash Assistance program (optional to Counties)

5.2.2 Issuance Methods

The State also reserves the right to add other types of issuance methods such as paycard technology, vault cards, or other electronic Benefit issuance methods that are or may be supported by the System. The addition of other types of issuance methods may be made at any time on Notice to the Contractor and made in accordance with the Work Authorization process, which may or may not incur costs to the State.

5.3 Supplemental Contracts

The State may undertake or award supplemental contracts for work related to this Contract or any portion thereof. The Contractor shall fully cooperate with such other contractors and the State in all such cases. To the extent that such cooperation requires additional work on the part of the Contractor which is beyond the scope of work outlined herein, the parties will follow the Work Authorization process.

5.4 Problem Reports

The Contractor shall provide to the State a list and description of all potential or actual problems, bugs, errors, and Deficiencies known by the Contractor to be in any of the Contractor customer's version of the System or variant of the System used to provide EBT Services, along with a schedule for Resolution thereof. The Contractor shall provide the State with such list and descriptions immediately upon discovery by the Contractor, but no later than in the weekly status Reports required by Exhibit A of this Contract. The Contractor shall also provide to the State a list, at this same time, for describing when the problems, bugs, errors, and Deficiencies occurred at the State, the Contractor's own facilities, or other customers of the Contractor.

5.5 Limitation of Authority

5.5.1 Waivers and Work Authorizations

Only the State Project Director or designee by writing (with the delegation to be made prior to action) shall have the express, implied, or apparent authority to waive any clause or condition of this Contract on behalf of the State. Also, any waiver of any clause or condition of this Contract is not effective or binding until made in writing and signed by the State Project Director or designee thereof and approved by the DGS.

5.5.2 Changes

The State Project Director or his or her designee is the only individual that may authorize changes in this Contract. The State Project Director shall delegate in writing authority to authorize changes prior to any changes. All such changes shall be made in writing and approved by the DGS. Any change proposed by any other State employee or an employee of any County shall be of no effect.

5.6 Continuous Improvement

The Contractor shall on an ongoing basis, as part of its total quality management process, identify, report to the State prior to implementing, and implement ways to improve performance of the Services and identify and apply techniques and tools from

other Contractor installations that would benefit the State either operationally or financially.

6 Equipment

6.1 Equipment Provided By the Contractor

The Contractor shall provide Equipment as required in Exhibit A of this Contract. The Contractor shall provide this Equipment in such quantities and in such locations as required by Exhibit A of this Contract.

6.1.1 Condition of Equipment

All Equipment furnished by the Contractor under this Contract shall be newly manufactured; used or refurbished Equipment is prohibited, unless otherwise specified herein.

6.1.2 Title to Administrative Equipment

Title of the Administrative Equipment provided by the Contractor under the terms of this Contract shall remain with the Contractor. Title to Licensed Materials and all copies thereof shall remain with the Contractor or others from whom the Contractor has obtained a licensing right.

6.1.3 Delivery

The Contractor shall strictly adhere to the Delivery Dates and completion schedules specified in this Contract. The quantities specified herein are the only quantities required. If the Contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess Equipment, and may return them to the Contractor at the Contractor's expense or utilize any other rights available to the State at law or in equity.

6.1.4 Risk of Loss

The Contractor and its insurers, if any, will relieve the State, Counties, Retailers, the FNS, and others of responsibility for all risk of loss or damage to the Equipment.

6.1.5 Representations and Warranties

6.1.5.1 Equipment

The Contractor represents and warrants that:

- a. The State's, the Counties', or the Retailers' use and possession of Contractor-provided Equipment will not be interrupted or otherwise disturbed by any person or entity asserting a claim under or through the Contractor.
- b. Contractor-provided Equipment will be free of any rightful claim of any third person or entity based on patent or copyright infringement, trade secret misappropriation, unfair trade practice, or otherwise.

- c. Contractor-provided Equipment, other than Retailer Equipment, will be new and unused, unless otherwise agreed to in writing and in advance by the State Project Director. Retailer Equipment may be used or refurbished but must carry the same warranty as new and unused Equipment.

6.1.5.2 Conformance

Each item of Contractor-provided Equipment, component, or feature thereof delivered hereunder will conform to the detailed Specifications of such Equipment, component, or feature.

6.1.5.3 Reliance

The Contractor acknowledges that the State is relying on the Contractor's expertise in the choice of Contractor-provided Equipment and its configuration. The Contractor warrants that each item of Equipment, component, or feature thereof delivered hereunder will be as listed in Exhibit A of this Contract, or will be Equipment which meets or exceeds the manufacturer's published specification. Any such configuration shall be deemed incomplete and undelivered if any item of Equipment, component, or feature thereof within that configuration has not been delivered, or, if delivered, not installed or operational in accordance with its manufacturer's published specifications and the Project Workplan.

6.2 Equipment Provided By the State

The State shall make available currently owned Retailer Equipment for the Contractor's use in equipping Retailers as required in Exhibit A of this Contract. State-owned Retailer and balance inquiry-only Equipment that becomes inoperable or is otherwise no longer installed in Retailer or other Sites shall be returned by the Contractor to the OSI EBT Project location at no cost to the State.

6.2.1 Title

Title to State-owned Equipment shall remain with the State.

6.2.2 Risk of Loss

The Contractor and its insurers, if any, will relieve the State, Counties, the FNS, and others of responsibility for all risks of loss or damage to the Equipment.

7 Licenses

7.1 License by Contractor

7.1.1 Contractor Materials

The Contractor hereby grants to the State a nonexclusive, perpetual, and irrevocable license to use, reproduce, publish, prepare derivative works based on, and distribute to agencies within the State and to the Counties the Licensed Materials in conjunction with the Deliverables under this Contract. The Licensed Materials shall be used to fulfill the State's information processing needs in conjunction with the System.

7.1.2 Termination of License

The license hereunder is granted as of the Execution Date and continues until the State or its assignee or transferee discontinues the use of the Licensed Materials. The State will destroy all copies of Licensed Materials, which has had its license discontinued by the State, within three (3) months after such license discontinuance, except that the State shall have the right to retain a copy of any such Licensed Materials for audit or archival purposes.

7.1.3 License Restrictions

The State agrees to: (i) refrain from reverse engineering, decompiling, cross-compiling, or disassembling any Software included in Licensed Materials; and (ii) reproduce and include the copyright and other proprietary notices and identifications provided by the Contractor on Licensed Materials on any copies that are made of Licensed Materials, in whole or in part, and in any form or media.

7.2 License from the State

7.2.1 State Materials

During the term of this Contract, the State hereby grants to the Contractor a nonexclusive, nontransferable, royalty-free license to use the State Materials internally for the sole purpose of supporting the Contractor's performance under this Contract. Notwithstanding the foregoing, the Contractor shall have no license to reproduce, publish, modify, prepare derivatives, distribute, or sub-license State Materials without prior written consent of the State Project Director.

7.2.2 Trademark License

During the term of this Contract and subject to the limitations of Section 7 of this Contract, the State agrees to and hereby grants to the Contractor a nonexclusive, nontransferable, royalty-free license to use the Marks in the performance of Services under this Contract. The Contractor shall use the Marks in a manner approved by the State Project Director in writing prior to use.

7.2.3 Termination of License

Upon termination, expiration, or cancellation of this Contract for any reason, the Contractor shall immediately cease using State Materials and Marks and shall, at the sole option of the State, either return the State Materials to the State, or destroy the State Materials and certify to such destruction.

8 Deliverables and Services

8.1 General

The Contractor shall develop and deliver all Deliverables listed in Exhibit C of this Contract, and all Deliverables and Services listed in the Project Workplan pursuant to Exhibit A of this Contract. The parties acknowledge that additional Deliverables may be

added in the future and agree to work together to identify the contents of and Acceptance Criteria for any additional Deliverables.

The Contractor shall use the Contractor's expert knowledge and this Contract as the basis for the development of the Deliverables.

8.2 Effect of Acceptance

By submitting a Deliverable or performing a Service, the Contractor represents that the Deliverable or Service shall meet the Specifications stated or referred to in this Contract. The parties acknowledge and agree that the State's Acceptance of a Deliverable or Service indicates only that it has reviewed the Deliverable or Service and detected no Deficiencies at that time and that the State's Acceptance of a Deliverable or Service does not discharge any of the Contractor's obligation to ensure comprehensiveness, functionality, or effectiveness of the System as a whole or in any way lessen the Contract requirements. The parties agree that Contract requirements shall be modified only through a Work Authorization or an amendment to this Contract.

8.3 Acceptance Process

8.3.1 Delivery and Review of Deliverables

The Contractor shall deliver all Deliverables pursuant to this Contract to the State Project Director or his/her designee at the State Project Office for purposes of determining whether the State will give its Acceptance for such Deliverables. The State's review of Deliverables shall be in accordance with the timeframes therefore set forth in the Project Workplan. The State's review period will vary with the complexity and volume of the Deliverable, and will be agreed upon as part of the Project Workplan. Unless otherwise specified in the Project Workplan or this Contract, the State will have at least 15 Business Days for such review, with the first day starting on the next Business Day after delivery.

8.3.2 Acceptance

The State will provide Acceptance for the Deliverable or Service if it meets the Acceptance Criteria for each Deliverable or Service, including but not limited to the scope and level of detail prescribed in the corresponding Data Item Description. However, if the Acceptance Criteria are not met, the State shall give Notice of its non-Acceptance, with such Notice delineating the reasons for non-Acceptance. The Contractor shall promptly correct the Deliverable or Service and resubmit it to the State for Acceptance. Rejection of a Deliverable or Service by the State does not allow for slippage of the Schedule regarding subsequent Deliverables or Services. After the Contractor has corrected the Deliverable or Service, the State will verify whether the Deliverable or Service meets the Acceptance Criteria and, in writing, will either give its Acceptance or not accept it following such review.

8.3.3 Corrections

The Contractor shall continue to correct the Deliverable or Service until, (i) Acceptance occurs or, (ii) the State terminates this Contract as permitted herein.

8.4 Transition Phase Acceptance

The State will not provide Acceptance of Transition Services until all required Deliverables have been submitted by the Contractor and received Acceptance by the State.

9 Contractor Staff

9.1 Organization Chart

The State and the Contractor acknowledge that the Contractor has provided the State with an organization chart of the Contractor's Project team, including names of Key Staff.

9.2 Approval of Staff

During the term of the Contract, the State reserves the right to approve or disapprove the Contractor's Staff, including but not limited to any Subcontractor's Staff assigned to this Contract, or to approve or disapprove any proposed changes in Staff or staffing levels. The State may request, and the Contractor will remove from work on the Project, the Contractor employees or Subcontractors who the State identifies as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on the Project is deemed to be contrary to the public interest or not in the best interest of the State, provided that such request will be based solely on nondiscriminatory reasons and the Contractor shall have the right to request the withdrawal of any such request upon a showing to the State that the request is not warranted based upon performance of the employee or Subcontractor. Upon request of the State Project Director, the Contractor shall provide the State with a résumé of any member of its Staff or a Subcontractor's Staff assigned to or proposed to be assigned to any aspect of the performance of this Contract prior to commencing any Services.

9.3 Staff Competence and Compliance

All Staff proposed by the Contractor as Key Staff and as replacements for other Staff shall be technically competent and shall have the skills necessary to perform that person's Project activities, including having experience equivalent to that of the person holding that position in the Proposal.

The Staff shall be experienced and fully qualified to engage in the activities and perform the Services required under this Contract. The Staff shall comply with all applicable licensing and operating requirements imposed or required under federal, State, or County law, and other standards of quality generally accepted in the field of the activities of such Staff.

9.4 Key Staff

9.4.1 Contractor Reassignment of Key Staff

The Contractor's Key Staff are listed in Exhibit A of this Contract. During the term of this Contract, the Contractor shall not make changes in the assignment of its Key Staff

except in the event of death, illness, retirement, disability, termination, or leaving the Contractor's employment and not serving as a consultant or contractor to the Contractor, or subject to mutual agreement by the parties to allow for removal. If a member of the Contractor's Key Staff is unable to perform due to factors beyond the Contractor's reasonable control (e.g., illness, resignation), the Contractor will use its best efforts in providing suitable substitute personnel.

9.4.2 State Approval of Reassignment

During the term of this Contract, the Contractor shall not make changes in the assignment of Key Staff without the prior written approval of the State Project Director. The Contractor shall provide Notice of its intent to reassign a Key Staff member and within 30 Days of providing such Notice, the Contractor shall provide the State Project Director with the proposed candidate's résumé. Reassignment by the Contractor of Key Staff shall be subject to liquidated damages as provided in Section 11.4.4.1 of this Contract.

9.4.3 Replacement by the Contractor

In the event replacement of a Key Staff member is required due to Section 9.4.1 of this Contract, the Contractor shall provide the State Project Director with the proposed replacement candidate's résumé within 30 Days of the date the Key Staff member becomes unavailable and allow the State Project Director the opportunity to interview and approve the candidate. If the Contractor does not receive Acceptance of the proposed candidate or fails to submit a résumé as required by this Contract Section, the State will assess liquidated damages as provided in Section 11.4.4.1 of this Contract. The State shall not unreasonably delay or deny approval of the Contractor's personnel. The candidate receiving Acceptance by the State shall be available to start immediately unless otherwise agreed to by the State.

9.4.4 Replacement by State

The State Project Director may request that the Contractor replace a Key Staff member and shall advise the Contractor in writing of the basis for the request. In such event, the Contractor shall provide a proposed replacement candidate's résumé within 30 Days of the date the requested replacement is made by the State. If the Contractor does not receive Acceptance of the proposed candidate or fails to submit a resume as required by this Contract Section, the State shall assess liquidated damages as provided in Section 11.4.4.1 of this Contract. The State will not unreasonably delay or deny approval of the Contractor's personnel. The candidate receiving Acceptance by the State shall be available to start immediately unless otherwise agreed to by the State.

10 Additional Warranties

10.1 System and EBT Services

The Contractor warrants that the System, in whole and in part, including but not limited to the Software source code, database management system, and Data design, and the EBT Services shall function, operate, and perform in all facilities in full and complete

conformity with the requirements of this Contract and designs which receive Acceptance, descriptions, and Specifications and will be free from all defects in materials and workmanship and free from defects of design. The warranties set forth herein are in addition to all other warranties, express or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

10.1.1 Re-Performance, Repair, and Replacement

The Contractor shall promptly, and in all cases within the time periods described in Section 11.7.1 of this Contract, and at the Contractor's sole expense, re-perform any Services, correct Deficiencies in all Deliverables, and repair or replace any Equipment not in compliance with all applicable warranties contained in this Contract.

10.1.2 Inurement of Warranties

All warranties, including special warranties specified herein, shall inure to the benefit of the State, its successors, assigns, customer agencies, and governmental users of the Deliverables or Services.

10.2 Services

The Contractor warrants that:

- a. It shall fully perform, complete, and deliver all work, tasks, Deliverables, goods, and Services required under this Contract. The Contractor shall perform all Services required pursuant to this Contract in a professional manner, with high quality, using best industry practices such as, Institute of Electrical and Electronics Engineers (IEEE), American National Standards Institute (ANSI), International Standards Organization/International Electrotechnical Commission (ISO/IEC), or Project Management Institute (PMI) standards, and in accordance with the standards of the manufacturers of applicable systems' components.
- b. Time is of the essence in connection with the Contractor fulfilling its obligations under the Contract.
- c. It shall give high priority to providing the Services including without limitation developing the Deliverables and correcting any Deficiencies or operational problems.

10.3 Four-Digit Date Compliance

The Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Equipment, Deliverables, and/or Services to the State. "Four-Digit Date Compliant" Equipment, Deliverables, and Services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

10.4 No Viruses or Bombs

The Contractor represents and warrants that the Software provided by the Contractor, including but not limited to any Third-Party Software, under this Contract shall contain no viruses, backdoors, bombs, or other software mechanisms, techniques, or devices designed to intercept and retransmit Data, provide unauthorized use of System resources, disrupt, disable, or stop its processing of Data. Any Third-Party Software warranties against viruses or disruptive software provided by the manufacturer, licensor, or seller of such Software shall include the State as a direct beneficiary.

10.5 Covenant against Gratuities

The Contractor warrants, by signing this Contract, that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer, agent, representative, or employee of the State with a view toward securing this Contract or securing favorable treatment with respect to any determinations concerning the performance of this Contract. For breach or violation of this warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any Equipment or Services which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

10.6 Good Standing

The Contractor warrants it is currently in good standing with the State Office of the Secretary of State and qualified to do business in California.

10.7 Power and Authority

The Contractor warrants that it has full power and authority to grant the rights herein granted and will indemnify and hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, the Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.

11 Additional Rights and Remedies

11.1 Letter of Credit

11.1.1 Purchase and Renewal

The Contractor shall within 21 Days of the DGS issuing the notice of intent to award furnish to the Deputy Director, Procurement Division, DGS, at no additional cost to the State, an irrevocable Letter of Credit. The irrevocable Letter of Credit shall be from a bank doing business in this State and insured by the Federal Deposit Insurance Corporation in the amount of \$8,000,000. The irrevocable Letter of Credit shall remain in effect throughout the Transition Phase and until State Acceptance of Transition Services.

11.1.2 Beneficiary

The DGS shall be identified as the beneficiary. The Letter of Credit, including the terms and conditions for collecting on the Letter of Credit, shall have been reviewed and pre-accepted by the State.

11.2 State Acceptance of Transition Services

The Contractor acknowledges and agrees that unsuccessful completion and therefore non-Acceptance of Transition Services shall cause the State to incur continued and additional cost from its current EBT contractor, J. P. Morgan Electronic Financial Services, Inc. The Contractor shall be liable and agrees to reimburse the State the actual cost incurred as a result of failing to achieve State Acceptance of Transition Services including without limitation any actual costs for EBT Services provided by J. P. Morgan Electronic Financial Services, Inc.

11.3 Withholds

11.3.1 Withholding Payments

The State shall have the right to withhold or delay payments to the Contractor, in whole or in part, if the Contractor fails to perform its obligations set forth in this Contract.

11.3.2 Release of Payment Withholds

The State shall withhold such payment described above or a portion thereof until Acceptance of the Deliverable or Service for which the payment withhold is associated or as otherwise provided in this Contract. [Acceptance shall not be unreasonably withheld or delayed.](#)

11.3.3 Customer Service

~~Notwithstanding Section 11.6 of this Contract, the~~ [The](#) Contractor shall ensure that Client Customer Services comply with Exhibit A of this Contract. In the event the State conducts an audit of the Client Customer Services and finds the Contractor is not in compliance with Exhibit A of this Contract, and the Contractor fails to implement the audit report recommendations or fails to correct noted Deficiencies within 30 Days of receipt of Notice from the State, the State shall withhold [ten \(10\) percent of each](#) monthly invoice until the Contractor demonstrates to the State Project Director that it has corrected the previously identified Deficiencies. In addition, the Contractor shall reimburse the State for the cost of such audit. [The assessment of liquidated damages pursuant to Contract Section 11.6 shall not apply to this Section 11.3.3.](#)

11.4 Liquidated Damages

11.4.1 Acknowledgement of Harm

The parties agree that any delay or failure by the Contractor to timely perform its obligations by the dates in the Project Workplan and in accordance with the Acceptance Criteria, Specifications, and other requirements in this Contract will interfere with the proper and timely implementation of the System and Services, to the loss and damage of the State. Further, the State will incur costs to maintain the functions that would have

otherwise been performed by the Contractor. In addition, this Contract uses Performance Standards to promote necessary system performance for the EBT System. The Performance Standards focus on parameters as they relate to meeting business objectives. When a Performance Standard is not met, a negative effect results. The EBT System is a high availability System, and it is anticipated that the most critical and severe outages will prompt an immediate response from the Contractor to restore the System. Such a critical outage is not expected to continue for an extended period. For the purposes of defining liquidated damages, the State Project Director shall assess damages in accordance with this Section 11.4 and Section 11.6 of this Contract.

11.4.2 Limitation of Liability for Liquidated Damages

Liquidated damages will not be assessed if the Contractor's delay or failure to timely perform its obligations was caused by factors beyond the reasonable control and without any material error or negligence of the Contractor, its Staff, or Subcontractors.

11.4.3 Payment of Liquidated Damages

For the amount of any such damages, the State shall have the right to reduce the amount of payment due hereunder to the Contractor or require direct payment therefor from the Contractor to the State. The parties agree that the damages herein provided are difficult to establish and the Contractor shall pay the amounts in Section 11.4 and Section 11.6 of this Contract as liquidated damages and not as a penalty.

11.4.4 Liquidated Damages - Specific Amounts

11.4.4.1 Key Staff

The Contractor shall provide Key Staff pursuant to Key Staffing Requirements contained in Exhibit A of this Contract. In the event the Contractor does not provide required Staff as identified in Exhibit A of this Contract, or provide State access to required Key Staff, the State Project Director shall assess liquidated damages at the rate of \$2,500 per Day for each required Key Staff not so provided, unless the failure to provide access to such staff is due to voluntary or involuntary termination.

11.4.4.2 Work Authorizations

The Contractor shall complete the Services in an approved Work Authorization including all documentation in accordance with this Contract and the initial Schedule for completion agreed to by the parties. If the Contractor does not complete the Services including all documentation in conformance with this Contract and the initial Schedule agreed to by the parties or such other date as mutually agreed, the State Project Director shall assess liquidated damages at the rate of \$2,500 per Work Authorization for each Business Day that the Services and documentation are not completed by the Contractor or are rejected by the State Project Director.

11.4.4.3 Deliverables

If the Contractor does not receive Acceptance for the following Deliverables in conformance with the Acceptance process set forth in Section 8.3 of this Contract and due dates as specified below, the State Project Director shall assess liquidated

damages at the rate of \$2,500 per Deliverable for each Business Day the Deliverable is late or rejected by the State Project Director.

11.4.4.3.1 Project Workplan

Which has not been delivered to the State Project Director to review for Acceptance within 30 Days following the Execution Date; or

Which has not received Acceptance from the State Project Director within 45 Days following the Execution Date or within ten (10) Days of the receipt by the Contractor of comments from the State Project Director rejecting the Project Workplan as delivered, whichever is later.

11.4.4.3.2 Statewide Transition Plan

Which has not been delivered to the State Project Director to review for Acceptance on or before the Delivery Date set forth in the Project Workplan; or

Which has not received Acceptance from the State Project Director within 15 Business Days following the Delivery Date specified in the Project Workplan.

11.4.4.3.3 Detailed System Design

Which has not been delivered to the State Project Director to review for Acceptance on or before the Delivery Date set forth in the Project Workplan; or

Which has not received Acceptance from the State Project Director within 15 Business Days following the Delivery Date specified in the Project Workplan.

11.4.4.3.4 Master Test Plan

Which has not been delivered to the State Project Director to review for Acceptance on or before the Delivery Date set forth in the Project Workplan; or

Which has not received Acceptance from the State Project Director within 15 Business Days following the Delivery Date specified in the Project Workplan.

11.4.4.4 User Acceptance

The State Project Director shall assess the Contractor liquidated damages of \$7,500 for each Day that Acceptance of the User Acceptance Tests is delayed beyond the date specified in the initial Project Workplan or such other date as mutually agreed in writing.

11.4.4.5 Go/No-Go Decision Point

If the Contractor does not receive Acceptance to proceed with Conversion at the Go/No-Go Decision Point, the State Project Director shall assess the Contractor liquidated

damages at the rate of \$10,000 for each Day beyond that Go/No-Go Decision Point that Acceptance to proceed with conversion is delayed.

11.4.4.6 Performance Standards

The State Project Director shall assess the Contractor liquidated damages as set forth below if the Contractor does not meet the applicable System Performance Standards.

The Contractor shall provide the State a ~~weekly~~-Report as applicable which accurately tracks and reports performance for each of the Performance Standards to be measured under this Contract Section and provides sufficient information for the State to determine whether each Performance Standard has been met.

11.4.4.6.1 Transaction Processing Platform

The Contractor shall maintain Transaction Processing Platform Uptime availability of 99.9 percent measured on a ~~weekly~~-monthly basis in accordance with applicable Specifications. This Performance Standard is based on the Transaction Processing Platform running 24 hours per Day, seven (7) Days per week, 365 Days per year in accordance with applicable Specifications. ~~A week shall begin each Sunday at 12:00:01 a.m. Pacific Time.~~ In any ~~week(s)~~month where the Contractor does not meet this 99.9 percent Performance Standard, the State Project Director shall assess liquidated damages pursuant to Table 1 of this Contract Section.

TABLE 1: TRANSACTION PROCESSING PLATFORM UPTIME AVAILABILITY

Transaction Processing Platform Uptime Availability Achieved	Liquidated Damages Due per <u>Month</u> Week
99.7% to 99.8%	<u>\$7,500</u> \$2,500
99.5% to 99.6%	<u>\$15,000</u> \$5,000
99.3% to 99.4	<u>\$30,000</u> \$10,000
99.1% to 99.2%	<u>\$45,000</u> \$15,000
98% to 99%	<u>\$75,000</u> \$25,000
Less than 98%	<u>\$225,000</u> \$75,000

11.4.4.6.2 EBT Administrative Functions

The Administrative Functions shall operate in accordance with applicable Specifications during the hours of 7:00 a.m. to 7:00 p.m. Pacific Time each Day. For purposes of assessing liquidated damages, the following areas must meet this Performance Standard:

- a. Administrative Application functions
- b. Host-to-Host processes

- c. Card printing
- d. PIN assignment processes

If the Contractor does not meet the above Performance Standard, the State Project Director shall assess liquidated damages pursuant to Table 2 of this Contract Section.

This Performance Standard does not apply to failure of hardware Equipment that is located at County offices.

TABLE 2: EBT ADMINISTRATIVE FUNCTIONS, LIQUIDATED DAMAGES

Performance Standard Not Met	Liquidated Damages Due Per Day
2 hours up to 6 cumulative hours per Day	\$5,000
Greater than 6 hours up to 8 cumulative hours per Day	\$10,000
Greater than 8 hours up to 12 cumulative hours per Day	\$20,000

11.4.4.6.3 Customer Service via ARU

The Contractor shall meet the Customer Service ARU Performance Standards specified in Exhibit A of this Contract. If the Contractor fails to achieve these Performance Standards, the Contractor shall deliver to the State Project Director a corrective action plan. The corrective action plan shall be delivered within five (5) Business Days of the determination that the Customer Service Performance Standards are not being met. The corrective action plan shall be subject to Acceptance. The corrective action plan shall be implemented no later than five (5) Days from the date the plan is approved by the State Project Director. The State shall have the rights described in Section 19.1.2 of this Contract, if the Contractor fails to meet the Customer Service Performance Standards within 30 Days of receiving Acceptance of the above described corrective action plan. In addition, the State Project Director shall assess the Contractor liquidated damages pursuant to Table 3 of this Contract Section for each month the Contractor fails to achieve any of the Customer Service Performance Standards.

TABLE 3: CUSTOMER SERVICE ARU PERFORMANCE LIQUIDATED DAMAGES¹

Service Performance Liquidated Damages	
<u>Monthly</u> Weekly Performance	Liquidated Damages Due per <u>Month</u> Week
99.1% to 99.5% Uptime Availability	\$7,500 \$2,500
98.1% to 99.0% Uptime Availability	\$15,000 \$5,000
96.1% to 98.0% Uptime Availability	\$30,000 \$10,000
Less than 96.0% Uptime Availability	\$75,000 \$25,000
Average time on hold 2 to 2.9 3 minutes	\$5,000 \$2,500
Average time on hold 3 to 3.9 4 minutes	\$15,000 \$7,500
Average time on hold 4 to 5 minutes	\$30,000 \$15,000
Average Time on hold greater than 5 minutes	\$50,000 \$25,000

¹ In calculating Customer Service Performance Standards for average time on hold, numbers shall be rounded to the nearest tenth percent. ~~However, 3.85 shall be rounded up to 4.0.~~

11.4.4.6.4 Benefit Posting

The Contractor shall post Benefits to Clients' Accounts submitted through the batch file Interface in accordance with the schedule(s) specified in Exhibit A of this Contract. The State Project Director shall assess liquidated damages in accordance with Table 4 of this Contract Section for each Day the Contractor fails to meet this Performance Standard. In the event there are multiple timeframes, the Contractor shall meet each one.

TABLE 4: BENEFIT POSTING LIQUIDATED DAMAGES

Performance Standard Not Met	Liquidated Damage Due Per Day
1 to 2 hours overdue in posting Benefits	\$5,000
More than 2 hours overdue in posting Benefits	\$10,000

11.4.4.6.5 Settlement and Reconciliation

The Contractor shall perform the tasks necessary to accomplish daily Settlement and Reconciliation. Settlement and Reconciliation shall include both Food Stamp Program and cash programs. The Contractor shall perform Settlement and Reconciliation with 100 percent accuracy. For purposes of assessing liquidated damages, 100 percent accuracy means:

- a. The daily amount of food stamp Settlement requested through the Automated Standard for Application for Payments (ASAP) system accurately represents all

redemption debits, credits, and adjustments that were transacted on that Settlement Day;

- b. The daily food stamp Benefit issuance and returns reported in Account Management Agent (AMA) accurately represent all new Benefits posted to Client Accounts and all Benefits removed from Client Accounts and returned to the appropriate governmental entity on that Settlement Day;
- c. The daily amount of cash funds drawn from County accounts accurately represents all redemption debits, credits, and adjustments that were transacted on that Settlement Day;
- d. Debits to the correct government funding accounts and credits to the correct Retailer accounts are processed to provide settlement on the next Business Day following the Settlement Day;
- e. The ASAP request for funding is initiated timely to allow settlement on the next Business Day following the calendar date on which funds are transferred for Settlement; and
- f. The daily File containing total values posted for deposits and expungements is transmitted for entry into the AMA system on the next Business Day following the calendar date on which funds are transferred for Settlement.

If the Contractor does not meet any or all of the above Performance Standards, the State Project Director shall assess liquidated damages in the amount of \$5,000 for each Day the Contractor fails to meet such Performance Standard.

11.4.4.6.6 Settlement and Reconciliation Reports

The Contractor shall perform the tasks necessary to distribute all daily Settlement and Reconciliation Files and Reports in a timely manner. Settlement and Reconciliation Files and Reports shall include both Food Stamp Program and cash programs. Distribution of Files and Reports is considered timely if all Files and Reports are accurate and successfully transmitted to Counties and the State by 11:00 ~~9:00~~ p.m. Pacific Time, following the end of the Settlement Day.

If the Contractor does not meet the Performance Standard, the State Project Director shall assess liquidated damages in the amount of \$2,500 for each Day the Contractor fails to meet such Performance Standard. The Performance Standard shall be considered not met if one or more Counties or the State do not receive timely Settlement and Reconciliation Services. The liquidated damage shall continue to accrue until the late or inaccurate File or Report is submitted and is accurate.

11.5 Other Remedies

The assessment of liquidated damages shall not constitute a waiver or release of any other remedy the State may have under this Contract for the Contractor's breach of this Contract, including without limitation, the State's right to terminate this Contract. Notwithstanding any other term of this Contract, the State may elect, in its discretion, to

recover actual damages or seek other remedies caused by the Contractor's failure to perform its obligations under this Contract in lieu of or in addition to assessing liquidated damages, although the State will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages. Such actual damages will include, without limitation, State staff time and travel costs.

11.6 Deficiencies

Deficiencies identified in the System shall be documented by either party and if documented by the State shall be submitted to the Contractor for Resolution. In assigning Deficiency levels, the parties shall use the definitions contained in Table 5 of this Contract Section. The individual reporting the Deficiency shall assign a Priority Level of 1 through Priority Level 4 consistent with Table 5 to each reported Deficiency according to the following guidelines. The assigned Priority Level may be changed at the discretion of the State Project Director. The State Project Director shall provide Acceptance of a Deficiency correction upon his or her determination that the Contractor has successfully implemented a Resolution and completed any associated Deliverables.

11.6.1 Deficiency Correction Periods

The Contractor shall fix or correct reported Deficiencies within the correction periods specified in Table 5. The correction period shall commence upon the Contractor's receipt of Notice either from the State or as reported by Contractor Staff. Deficiencies shall be corrected by the Contractor at no additional cost to the State.

TABLE 5: DEFICIENCY PRIORITY LEVELS DEFINED

Deficiency Level	Description of Deficiency	Correction Period
Priority Level 1	A Deficiency that prevents an element of the System from achieving its fundamental purpose in whole or in part.	Within 24 hours
Priority Level 2	A Deficiency that prevents an element of the System or Service from processing or meeting the Specifications and no workaround acceptable to the State is available to correct the Deficiency.	Within 5 Days

Deficiency Level	Description of Deficiency	Correction Period
Priority Level 3	A Deficiency in which the function or Deliverable achieves substantially all of the critical elements for such function or Deliverable, but noncritical elements of the function or Deliverable are implemented such that the function or Deliverable does not meet the Specifications and Acceptance Criteria but does not add undue risk or work effort to the Project, e.g., failure to maintain current plans and documentation, untimely delivery of management reports, poor quality system deliverables, or manual intervention is required to complete tasks defined as automated.	Within 30 Days
Priority Level 4	A Deficiency in which cosmetic errors exist in the function or Deliverable, such that the function or Deliverable achieves all of the elements for Acceptance or conforms to the agreed upon Specifications, except for cosmetic errors, but because the errors may be confusing, unprofessional, cumbersome, or not user friendly, the acceptability of the function or Deliverable is diminished, e.g., misspellings, misleading headings, minor inaccuracies in documentation, nonconforming screen navigation, or minor failures in maintenance of the Project Schedule.	Within 90 Days

11.6.2 Damages Amounts

Following Acceptance of Transition Services, the State shall assess liquidated damages in accordance with Table 6 of this Contract Section, for Deficiencies not subject to specific amounts of liquidated damages as provided in Section 11.4.4 of this Contract.

TABLE 6: DEFICIENCY LIQUIDATED DAMAGES

Liquidated Damage	
Condition	Amount
Resolution of each Priority Level 1 Deficiency is not reached within 24 hours.	\$10,000 per Day until resolved
Resolution of each Priority Level 2 Deficiency is not reached within 5 Days.	\$5,000 per Day until resolved
Resolution of each Priority Level 3 Deficiency is not reached within 30 Days.	\$1,000 per Day until corrected
Resolution of each Priority Level 4 Deficiency is not reached within 90 Days.	\$500 per Day until corrected

11.6.3 Modifications to Correction Period

The State Project Director may modify the Priority Level and time-to-correct period if in his or her sole judgment it is in the best interest of the Project. The State Project Director may waive in writing the Contractor's requirement to correct a reported Deficiency if in his or her sole judgment the Deficiency has been incorrectly reported.

11.6.4 Deficiency Correction during Transition

In addition to its other obligations described in this Contract, the Contractor shall correct all Deficiencies identified during Transition before the State will pay amounts agreed upon for completion of successful Transition Services. If the Contractor is unable to correct all Deficiencies arising during Transition in accordance with the requirements of this Contract, the State shall have the right to exercise its available remedies.

11.7 Reductions in Payments Due

Amounts due the State by the Contractor, including but not limited to liquidated or other damages, or claims for damages, may be deducted or setoff by the State from any money payable to the Contractor pursuant to this Contract.

11.8 Deductions for Errors in Processing Benefits

The Contractor shall be liable to the State for any errors caused by or arising from the acts or omissions of the Contractor, its officers, employees, agents, or Subcontractors, in processing Benefits or reimbursements, including without limitation any overpayments or duplicate payments and the State's costs and attorneys' fees incurred in collecting such payments, except to the extent such errors arise from the actions of the State, Counties, or federal agencies. Such liabilities may, at the State's option, be deducted from amounts payable to the Contractor. This liability of the Contractor shall be in addition to any other liability for processing errors established by this Contract or

by operation of law. The Contractor shall not draw federal funds to cover overpayments or transactions in excess of State-authorized Client Benefits.

11.9 Cover

If, in the reasonable judgment of the State, a default by the Contractor is not so substantial as to require termination, reasonable efforts to induce the Contractor to cure the default are futile, and the default is capable of being cured by the State or by another resource without unduly interfering with continued performance by the Contractor, the State may provide or procure the Services reasonably necessary to cure the default, in which event the Contractor shall reimburse the State for the reasonable cost of the services.

11.10 Right to Inspect

The Deliverables and Services being provided by the Contractor and its Subcontractors, if any, pursuant to this Contract shall be available for inspection and review at any reasonable time by representatives of the State including, but not limited to, the State's Independent Verification and Validation vendor and/or Independent Project Oversight Consultant.

11.11 Transaction Processing Accuracy Standard

The Contractor shall meet the Transaction Processing Accuracy Standard specified in Exhibit A of this Contract. The Contractor shall provide the State a weekly Report which accurately tracks and reports performance of this Performance Standard and provides sufficient information for the State to determine whether the Performance Standard has been met. In the event the Contractor does not meet this Performance Standard, the Contractor shall immediately research to determine the cause and deliver to the State a corrective action plan. In the event it is determined that the cause is due to a transaction processing error or errors, e.g., an inappropriate debit posted to a Client Account, the Contractor shall immediately research the Deficiency to determine the cause and correct each such Deficiency. In addition, in the event the Deficiency resulted in a loss to any Client, Retailer, Third-Party Processor, or other party, the Contractor shall promptly reimburse such Client, Retailer, Third-Party Processor, and other party for the actual amount of such Deficiency and the Contractor shall also pay to the State any costs and damages incurred by the State as a result of each such Deficiency.

11.12 Stop Work

11.12.1 Issuance of Stop Work Order

The State Project Director may, at any time, by written stop work order to the Contractor, require the Contractor to stop all or any part of the work called for by this Contract for a period of up to 90 Days after the stop work order is delivered to the Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate it is issued under this Contract Section. Upon receipt of the stop work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work

stoppage. The Project Workplan shall be delayed on a day-for-day basis if the State Project Director has issued a stop work order to the Contractor and such stop work order is causing delays in completing Services in accordance with the Project Workplan. The Project Workplan may be delayed in addition to the day-for-day delays provided in the preceding sentence upon approval by the State Project Director. Within a period of 90 Days after a stop work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State Project Director shall either:

- a. Cancel the stop work order; or
- b. Terminate the work covered by the stop work order as provided for in Section 19.1.1, Section 19.1.2, or Section 19.6 of this Contract.

11.12.2 Cancellation of Stop Work Order

11.12.2.1 Issuance

If a stop work order issued under this Contract Section is canceled or the period of the stop work order or any extension thereof expires, the Contractor shall resume work. The State Project Director shall make a reasonable adjustment in the Schedule, the Charges, or both, and this Contract shall be modified in writing accordingly, if:

- a. The stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and
- b. The Contractor asserts its right to a reasonable adjustment within 30 Days after the end of the period of work stoppage provided that if the State Project Director decides that the facts justify the action, the State Project Director may receive and act upon a proposal submitted at any time before final payment under this Contract.

11.12.2.2 Remedies if Termination for Convenience

If a stop work order is not canceled and the work covered by the stop work order is terminated in accordance with Section 19.6 of this Contract, the remedies provided in that Contract Section shall apply.

11.12.2.3 Rights and Remedies for Termination for Default

If a stop work order is not canceled and the work covered by the stop work order is terminated by default, the parties shall pursue their rights and remedies as described in this Contract.

12 Work Authorizations

12.1 General

The State Project Director may, at any time, by written Work Authorization, make changes within the general scope of this Contract if the State Project Director determines that such changes are necessary to the successful accomplishment of the

general scope of work for this Contract, or in the event work required by this Contract is no longer required or other changes in this Contract must be made. In such event, the procedures outlined in this Contract Section shall apply.

12.2 Enhancements

12.2.1 State-Required Enhancements

The Contractor shall promptly produce such Enhancements as the State requests at an additional cost in accordance with the Work Authorization process. Enhancements to correct any Deficiency shall be provided to the State at no additional cost.

12.2.2 Federally Required Enhancements

The Contractor shall adapt the System to conform to Enhancements in System requirements due to changes in federal law or regulation enacted after the Execution Date.

12.3 Work Authorization Approval Process

12.3.1 Work Authorization Required

For each change in work requirements, a Work Authorization shall be prepared. Either party may initiate a proposal for a Work Authorization.

12.3.2 Content of Work Authorization

The Contractor shall respond in writing to a Work Authorization issued by the State Project Director within ten (10) Days of receipt, or such longer time allowed by the State Project Director. Each Work Authorization response shall contain a statement of the purpose, objective, or goals to be performed by the Contractor, a full work description, the job classification or approximate skill level of the personnel to be made available by the Contractor, an identification of all significant material and Deliverables to be developed by the Contractor and delivered to the State, an identification of all significant materials to be delivered by the State to the Contractor, a time schedule for the provisions of these Services by the Contractor, Acceptance Criteria for the work to be performed, the name or identification of the Contractor personnel to be assigned, and the Contractor's work hours required to accomplish the purpose, objective, or goals. The Contractor shall base prices for Work Authorizations on the reasonable number of Staff hours required multiplied by the Work Authorization Rates listed in Exhibit B of this Contract, plus any other reasonable costs to be incurred to effect the change at a fair and reasonable price. When there is a cost impact, i.e., increase or decrease in amounts to be paid under this Contract, the Contractor shall advise the State Project Director in writing of: (i) the increase, including a breakdown of the number of Staff hours by level of personnel needed to effect this change; or (ii) the decrease. The Contractor shall submit its price for a Work Authorization on both a fixed price and a time and materials basis, either of which the State may choose. The Contractor shall not bill additional Work Authorization hours for Staff assigned to the EBT Contract full time. The Contractor will be paid for work under a Work Authorization based upon actual time and materials used to perform the authorized work or the fixed priced but no more than

the original Work Authorization. The Contractor shall not charge the State for preparing a Work Authorization or any analysis or other documents necessary to evaluate and implement a Work Authorization.

12.3.3 Inclusion in Contract

All Work Authorizations must be in writing, signed by the State Project Director and approved by the DGS prior to beginning work. Upon Acceptance by the State Project Director and approved by the DGS, each such Work Authorization shall be incorporated into and become a part of this Contract and the terms and conditions of this Contract shall apply to all such Work Authorizations. In no event shall a Work Authorization be deemed to be a separate contract.

12.3.4 Prior Approval

In the event any single Work Authorization or the total costs of all Work Authorizations equals or exceeds ten (10) percent of the total Contract value, prior approval of the State's control agencies is required prior to Work Authorizations becoming effective.

12.3.5 Good Faith

The Contractor and the State shall negotiate in good faith and in a timely manner with regard to all Work Authorizations.

12.3.6 Stop Work

The State has the right to require the Contractor to stop or suspend work on a Work Authorization by prior Notice in accordance with Section 11.12 of this Contract.

12.3.7 Disagreement, Claims, and Termination

12.3.7.1 Disagreement

If the parties are unable to reach agreement within ten (10) Days of the Contractor's response to a Work Authorization issued by the State, the State Project Director may make a determination of the fair and reasonable price and schedule and will provide the Contractor with a written explanation in the event of such determination. Following receipt of such written explanation, the Contractor shall immediately proceed with the work according to such price and schedule, subject to the Contractor's right to appeal the State Project Director's determination of the price or schedule pursuant to Section 12.3.7.2 of this Contract. Nothing in this Contract Section shall in any manner excuse the Contractor from proceeding diligently with this Contract as modified by a Work Authorization.

12.3.7.2 Claims

Within 30 Days after receipt of a Work Authorization, unless the period is extended by the State Project Director in writing, the Contractor shall file Notice of its intent to assert a claim through the dispute process contained in Section 20.12 of this Contract. No claim by the Contractor for such an adjustment hereunder shall be allowed if Notice is not given prior to final payment under this Contract.

12.3.7.3 Termination

If the Contractor fails or refuses to perform a Work Authorization issued by the State, the Contractor shall be in material breach of this Contract, and the State shall have the right to immediately terminate this Contract for default.

13 Insurance

13.1 Liability and Auto Insurance

The Contractor shall obtain, before the commencement of its Services herein described, and, during the term of this Contract, maintain, in full force and effect, the insurance coverage described in this Contract Section with an insurance carrier or carriers approved by the State, which approval shall not be unreasonably withheld. The Contractor shall include the State as an additional named insured party in the Contractor's insurance policy obtained hereunder. The minimum acceptable limits and types of coverage shall be not less than \$1,000,000 per occurrence and \$2,000,000 aggregate limit per occurrence for each of the following categories:

- a. General public liability covering the risks of bodily injury, property damage, and personal injury (including death).
- b. Automobile liability (owned and unowned) covering the risks of public liability and property damage.
- c. Fidelity bond, covering, among other matters, errors and omissions of the Contractor in performing the Services.
- d. Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000.
- e. Crime Coverage with a deductible not to exceed \$1,000,000 and coverage of not less than \$5,000,000 single limit per occurrence and \$10,000,000 in the aggregate, which shall at a minimum cover occurrences falling in the following categories; computer fraud; forgery; money and securities; and employee dishonesty.

13.2 Workers' Compensation Coverage

13.2.1 Coverage Required

Prior to performing Services under this Contract, the Contractor shall provide or purchase workers' compensation coverage for the Contractor's employees, as may be required under applicable law during the term of this Contract. Should the Contractor fail to secure such coverage or fail to pay premiums, as may be required under applicable law, the State may deduct the amount of premiums and any penalties owing from the amounts payable to the Contractor under this Contract and transmit the same to the appropriate State agency. This provision does not waive any right to collect from the Contractor amounts paid by the State.

13.2.2 Payments

The State shall not be responsible for payment of workers' compensation premiums or for any other claim or benefit for the Contractor, or any Subcontractor or employee of the Contractor, which might arise under the workers' compensation laws during performance of duties and services under this Contract. If the State, upon audit, determines that workers' compensation payments are due and owing as a result of work performed under this Contract, those payments shall be made by the Contractor.

13.3 Subcontractors

The Contractor shall require any and all of its Subcontractors to obtain and maintain similar policies of compensation insurance as described in this Contract Section or be properly certified under applicable state law as self insured. A certificate of such insurance policy carried shall be furnished to the State upon request.

13.4 Premiums

Premiums on all insurance policies shall be paid by the Contractor or its Subcontractors. Such insurance policies provided for the State pursuant to this Contract Section shall expressly provide therein that the State be named as additional insured, and that it shall not be revoked by the insurer until 30 Days notice of intended revocation thereof shall have first been given to the State by such insurer.

13.5 Certificates

The Contractor shall furnish to the State copies of certificates of all required insurance within 30 Days of the Execution Date.

14 State Property

14.1 Ownership

The State shall retain title to all Property provided by the State to the Contractor under the Project.

14.2 Use of Property

Any Property provided to the Contractor shall, unless otherwise provided herein, or approved in writing by the State Project Director, be used only for the performance of and subject to the terms of this Contract. The Contractor's use of the Property shall be subject to the State's security, administrative, and other requirements.

14.3 Damage to Property

The Contractor shall protect and be responsible for any loss, destruction, or damage to Property which results from or is caused by the Contractor's acts or omissions. The Contractor shall repair or replace any damage, destruction, or loss at the facility or Sites caused by the Contractor's acts or omissions.

14.4 Notice of Damage

Upon the loss of, destruction of, or damage to any of the Property, the Contractor shall notify the State Project Director thereof and shall take reasonable steps to protect that Property from further damage.

14.5 Surrender of Property

The Contractor will ensure that the Property will be returned to the State in like condition to that in which it was furnished to the Contractor, reasonable wear and tear excepted. The Contractor shall surrender to the State all Property upon the earlier of expiration or termination of this Contract. The Contractor grants the State the right to enter upon the Contractor's premises for the sole purpose of recovering any of the Property that the Contractor fails to return within 30 Days of termination or expiration of this Contract. Upon failure to return the Property within 45 Days of this Contract termination or expiration, the Contractor shall be charged with reasonable costs of recovery, including, without limitation, transportation and attorney fees.

15 Confidential Information

15.1 Access and Nondisclosure Obligation

During the term of this Contract, the Contractor and the State will have access to and become acquainted with Confidential Information of the other party. The State and the Contractor, and each of their officers, employees, and agents, shall maintain all Confidential Information of the other party in strict confidence and shall not at any time use, publish, reproduce, or disclose any Confidential Information, except to authorized employees, contractors, or agents requiring such information, as authorized in writing by the other party, or to perform its obligations as authorized hereunder, unless otherwise required by law.

15.2 Protective Measures

Both parties shall take steps to safeguard the other party's Confidential Information against unauthorized disclosure, reproduction, publication, or use. The Contractor shall have written policies governing access to and duplication and dissemination of all such Confidential Information. The Contractor shall take appropriate action with any persons permitted access to the State's Confidential Information so as to enable the Contractor to hold the Confidential Information in strict confidence and otherwise to satisfy the Contractor's obligations under this Contract. The use or disclosure by either party of any Confidential Information concerning the other party for any purpose not directly connected with the administration of the disclosing party's responsibilities with respect to Service(s) provided under this Contract is prohibited except by prior written consent of the other party.

15.3 Security Requirements

The Contractor, and its officers, employees, contractors, and Subcontractors shall at all times comply with all security standards, practices, and procedures which are equal to

or exceed those of the State, including without limitation the California Department of Social Services' Confidentiality and Security Requirements, and which the State may establish from time to time, with respect to information and materials which come into the Contractor's possession and to which the Contractor gains access under this Contract. Such information and materials include without limitation all Confidential Information.

15.4 Unauthorized Disclosure of Confidential Information

The Contractor shall immediately report both orally and in writing to the State Project Director any and all unauthorized disclosures or uses of the State's Confidential Information of which it or its Staff is aware or has knowledge. Each party acknowledges that any publication or disclosure of the other party's Confidential Information to others may cause immediate and irreparable harm to the other party, and if either party should publish or disclose such Confidential Information to others without authorization, the other party shall immediately be entitled to injunctive relief to prevent further harm.

15.5 Public Records Act

15.5.1 Public Records

Notwithstanding anything to the contrary herein, the Contractor acknowledges that this Contract shall be a public record under State law. Any specific information that is claimed by the Contractor to be Confidential Information must be clearly identified as such by the Contractor. To the extent consistent with State law, the State will maintain the confidentiality of all such information marked Confidential Information.

15.5.2 Request for Disclosure

The State will notify the Contractor as soon as reasonably practicable of any and all public records requests for the Contractor's Confidential Information in accordance with and subject to applicable State laws regarding disclosure of such Confidential Information. If the Contractor disagrees with disclosure of the Contractor's Confidential Information by the State, the Contractor shall have the right to contest its disclosure in accordance with State law. If the Contractor fails to obtain a court order enjoining disclosure, the State will release the identified requested information on the date specified.

15.6 Exceptions

The following information shall not be considered Confidential Information for the purposes of this Contract: information which was already known to the receiving party, other than under an obligation of confidentiality, at the time of disclosure by the disclosing party; information which was generally available to the public or otherwise part of the public domain at the time of its disclosure to the receiving party; information which now is or hereafter becomes publicly known by other than a breach hereof; information which is developed by one party independently of any disclosures made by the other party of such information; or information which is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the public.

15.7 Written Staff Contracts

The Contractor agrees to require Staff which have access to the State's Confidential Information, to agree in writing to observe and perform all provisions of Section 15 of this Contract applicable to such Staff. Submission by the Contractor to the State Project Director of the Contractor's current process shall be deemed as meeting this requirement provided the Contractor's current process substantially meets the requirements of Section 15 of this Contract in form and substance.

15.8 Survival

The provisions of Section 15 of this Contract shall remain in effect following the termination or expiration of this Contract.

16 Ownership and Rights

16.1 Contractor Ownership

The Contractor represents and warrants that:

- a. The Contractor or its Subcontractors is the owner of the Licensed Materials and the Developments (including but not limited to the Deliverables) until they are transferred to the State, without violating any rights of any third party.
- b. There is no actual or threatened suit by any such third party based on an alleged violation of the rights granted or licensed by the Contractor to the State and the FNS hereunder.

16.2 State Ownership in Developments

In accordance with federal regulations, the State shall own all right, title, and interest in and to the Development, including but not limited to the Deliverables and the Software (excluding ownership of the Licensed Materials for purposes of this Contract Section). The Contractor shall take all actions necessary and transfer ownership of the Developments to the State upon their Acceptance. All products of the Services, including without limitation the Developments and Data, shall be deemed works made for hire of the State for all purposes of copyright law, and copyright shall belong solely to the State. In the event that any such work is adjudged to be not a work made for hire, the Contractor agrees to assign, and hereby assigns, all copyright in such work to the State. The Contractor shall, at the expense of the State, assist the State or its nominees to obtain copyright, trademarks, or patents for all such works in the United States and any other countries. The Contractor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents, and to transfer or cause to transfer to the State all the right, title, and interest in and to such works. The Contractor also agrees to waive and not assert any moral rights it may have in any such works. The State shall peacefully and quietly have, hold, possess, and enjoy each Development without suit, molestation, or interruption.

16.3 FNS License in Software

The State shall retain all ownership rights in any software or modifications thereof and associated Documentation developed, designed, or installed with federal financial participation. The FNS reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and otherwise use and to authorize others to use for government purposes such software, modifications, and Documentation. Proprietary operating and third-party software packages which are provided hereunder at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership provisions in Section 16.3 of this Contract.

17 Indemnifications

17.1 General

17.1.1 Acts or Omissions of Contractor

The Contractor shall, at its expense, indemnify, defend, and hold harmless the State, including employees, officers, contractors, and agents from and against any losses, liability, damages, penalties, costs, fees, including, without limitation, reasonable attorneys' fees, or expenses from any claim or action caused by or arising from the acts or omissions of the Contractor, its officers, employees, agents, or Subcontractors, including without limitation:

- a. Claims for bodily injury, death, or damage to property;
- b. Losses for errors or omissions of the Contractor;
- c. Breaches of warranty under this Contract;
- d. Financial losses resulting from pre-activated Cards that are forwarded to Clients from Card manufacturers;
- e. Fraud and abuse on the part of the Contractor or its representatives or Subcontractors;
- f. Erroneous or duplicate postings to a Client Account by cause of the Contractor;
- g. Losses from transactions performed with Cards issued but not activated by the Client or the Contractor;
- h. Losses from funds drawn from a Client's Account after a Cardholder or County notified the Contractor that the Card had been lost or stolen;
- i. Damages or losses suffered by a federal or State agency due to negligence on the part of the Contractor;
- j. Loss of Benefits caused by fraud or abuse on the part of the Contractor or its representatives or Subcontractors;
- k. Payment of applicable workers' compensation premiums or any claim for workers' compensation benefits by the Contractor's agents, employees, representatives, or Subcontractors;

- l. Damages or losses caused by or arising from the Contractor's failure to protect the State's Confidential Information pursuant to this Contract including without limitation costs incurred by the State in issuing notices to affected parties because of Contractor's failure; and
- m. Claims, taxes, premiums, or assessments grounded in an allegation that the Contractors' employees, agents, or Subcontractors are employees of the State.

17.1.2 Conditions For Defense and Payment

The defense and payment described in Section 17.1.1 of this Contract will be conditional upon the following:

- a. The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- b. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State shall have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

17.1.3 Other Claimants

The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by the Contractor's agents, employees, or representatives, or any Subcontractor or its employees.

17.2 Federal Sanctions, Penalties, or Disallowances

The Contractor shall indemnify the State for any funds the State pays to the federal government or any lost federal funding to the extent sanctions, penalties, disallowances, or other delays resulted from or were caused by the performance of the Contractor.

17.3 Intellectual Property Indemnity

17.3.1 State's Rights to Developments

The Contractor shall, at its expense, defend, indemnify, and hold harmless the State from any claim or action against the State which is based on a claim that the State's exercise of its rights in the Developments or any one or part thereof under this Contract infringes a patent, copyright, or other proprietary right of a third party or misappropriates a trade secret of a third party, and the Contractor shall pay all liabilities, damages, and costs (including reasonable attorney fees) caused by or arising from such claim, provided that the Contractor is promptly given notice of such claim. The Contractor shall

actively defend any action on such claim and all negotiations for its settlement or compromise.

17.3.2 State Remedies

In case the Developments, or any one or part thereof, are in such action held to constitute an infringement or misappropriation, or the use thereof is enjoined or restricted, the Contractor shall, at its own expense and in the following order of priorities: (i) procure for the State the right to continue using the Developments; or (ii) modify the Developments to comply with the Specifications and to not violate any intellectual property rights. If neither of these options can reasonably be taken, or if the use of such Developments by the State shall be prevented by injunction, the Contractor agrees to take back such Developments and refund any sums the State has paid the Contractor for the Developments taken back, and make every effort to assist the State in procuring substitute Developments at a cost similar to the amount paid for the original infringing product(s). If, in the sole opinion of the State, the return of such infringing Developments makes the retention of other items of Equipment or Software acquired from the Contractor under this Contract impractical, the State shall then have the option of terminating this Contract, or applicable portions thereof, without penalty or termination charge to the State and the Contractor agrees to take back such Developments, including but not limited to Equipment or Software, and refund any sums the State has paid the Contractor.

17.3.3 Restrictions on Use

Notwithstanding the above, the Contractor shall not indemnify the State to the extent that such claims arise from the State's misuse, modification, or other alteration of the Developments and to the extent that such use or modification or other alteration to the Developments caused such infringement or misappropriation claim. However, the State shall be able to exercise its rights in the Developments in any legally permissible way, consistent with its ownership rights authorized under this Contract.

18 Limitation of Liability

18.1 Consequential Damages

In no event will either the Contractor or the State be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except as provided below.

18.2 Contractor Exceptions for Limitation of Liability

Contractor shall be liable for consequential, incidental, indirect, special, or punitive damages:

- a. To the extent that the Contractor's liability for such damages is specifically set forth in this Contract;

- b. To the extent that the Contractor's liability for such damages arises out of Section 16 of this Contract;
- c. To the extent that the Contractor's liability for such damages arises out Section 17.1.1 of this Contract excluding claims arising under provisions calling for indemnification for third party claims against the State for bodily injury to persons or damage to real or tangible personal property caused by the Contractor's negligence or willful misconduct;
- d. To the extent that the Contractor's liability for such damages arises out of Section 17.2 of this Contract;
- e. To the extent that the Contractor's liability for such damages arises out of Section 17.3 of this Contract or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights;
- f. For costs or attorney fees that the State becomes entitled to recover as a prevailing party in any action or;
- g. To claims covered by any specific provision herein calling for liquidated damages.

19 Termination

19.1 State's Rights of Termination

19.1.1 Funding Changes

The State may immediately terminate this Contract, in whole or in part, effective upon delivery of Notice to the Contractor, or at such later date as may be established in writing by the State, under any of the conditions described below in this Contract Section. A termination by the State pursuant to Section 19.1.1 of this Contract shall not be deemed a termination for default and the Contractor shall be entitled only to payments in accordance with the terms of this Contract for Services rendered prior to the effective date of termination plus reasonable Charges the Contractor can demonstrate to the satisfaction of the State have resulted from the termination. Termination pursuant to Section 19.1.1 of this Contract may occur as a result of any of the following conditions:

- a. Funding for this Contract is not appropriated, not obtained, reduced, changed, eliminated, or otherwise modified by applicable funding sources; or
- b. Federal or State statute, regulations, or guidelines are modified, changed, or interpreted in such a way that the Services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.

19.1.2 Default

The State Project Director, by Notice to the Contractor, may immediately terminate this Contract in whole or in part in the event of a default by the Contractor and the State shall be relieved of the payment of consideration to the Contractor if the Contractor, for causes within the control of the Contractor, fails to correct or cure any of the failures or events set forth below in Section 19.1.2 of this Contract within 30 Days of receipt of Notice thereof by the State:

- a. If the Contractor fails to provide Services or Deliverables called for by this Contract within the time specified in the Project Workplan or this Contract, or any extension thereof, including without limitation failing to: (i) achieve Acceptance of each of the Deliverables; (ii) meet the milestones for Conversion; or (iii) meet the milestones for federal Acceptance;
- b. If any license or certification required by law or regulation to be held by the Contractor to provide the Services required by this Contract is for any reason denied, revoked, suspended, or not renewed;
- c. If the Contractor fails to perform any other provision of this Contract, or so fails to pursue the Services as to endanger timely performance of this Contract;
- d. If the State determines that the health, safety, or welfare of persons receiving Services may be in jeopardy by the Contractor's failure to perform;
- e. Based upon a preponderance of the evidence, the State finds that the Contractor has engaged in fraudulent acts in connection with the performance of this Contract;
- f. If the Contractor habitually and regularly fails to correct Priority Level 1 and Priority Level 2 Deficiencies within the timelines set forth in Section 11.6.1 of this Contract;
- g. If the System fails to achieve one or more of the Performance Standards for three (3) consecutive calendar months following Transition;
- h. If the Contractor is more than 90 Days behind schedule as established in the Project Workplan;
- i. If the Contractor habitually and regularly fails to provide the Services, as required by this Contract, within the time specified in the Project Workplan and in accordance with this Contract; or
- j. Based on the preponderance of the evidence, the State finds that there is a violation by the Contractor of the State's then-current conflict of interest rules, unless otherwise waived by the State in writing.

19.1.3 Gratuities

The State may, in addition to its other rights, immediately terminate this Contract for default if any gratuities in the form of entertainment, gifts or otherwise, were offered or given by the Contractor to an employee of the State, with a view towards securing this Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to this Contract.

19.1.4 Inability to Correct Deficiencies During Cure Period

If the Contractor is unable to: (a) correct all Priority Level 1 through Priority Level 3 Deficiencies within the number of Days as required in a Cure Notice or, if not in the Cure Notice, within ten (10) Days of receipt thereof; (b) correct all Deficiencies in the System during System Demonstration within the number of Days as required by this Contract; or (c) correct all Deficiencies arising during the User Acceptance Testing and to otherwise complete Transition in accordance with the requirements of this Contract, the State may, at its option: (i) immediately terminate this Contract for default; (ii) require the Contractor to provide a replacement Deliverable or Service associated with the Deficiencies within a specified time period; or (iii) require the Contractor to continue working, without additional compensation, until the Deficiencies are corrected or eliminated. If the State returns a Deliverable to the Contractor, the Contractor shall immediately return to the State all payments made to the Contractor for the Deliverable, if any. Title to, and all other rights in, Deliverables returned by the State shall return to the Contractor upon refund of any amounts paid.

19.1.5 FNS Requirements

If the Contractor is unable to satisfy all FNS requirements for the System within the number of days of the System's Acceptance as required in the Project Workplan, the State may at its option: (i) immediately terminate this Contract, which termination shall be deemed to be due to the Contractor's default, without penalty to the State and, at the State's option; (ii) require the Contractor to remove any Equipment at the Sites; (iii) request the Contractor to repair the Software for further User Acceptance Tests; or (iv) continue performing the User Acceptance Test on the System and require the Contractor to continue until all FNS requirements are satisfied. In the event the State terminates this Contract as provided in Section 19.1.5 of this Contract, the Contractor shall return to the State all amounts paid by the State for the System, and the State shall return all Deliverables to the Contractor. Title to, and all other rights in, Deliverables returned by the State shall return to the Contractor upon full refund of any amounts paid. The State's option to terminate this Contract under this Contract Section shall remain in effect until successful completion of the User Acceptance Tests.

19.2 Cover

If the State terminates this Contract due to the Contractor's default, the State shall thereupon have the right to lease or purchase required Deliverables and Services and the Contractor shall be liable for damages to the extent provided by law. The State shall thereupon have the right to deduct from any monies due or that thereafter become due

to the Contractor or to require the Contractor to pay the State for all additional costs for such Deliverables and Services which shall include, but not be limited to, the following:

- a. Any cost difference between the Deliverables and Services and the replacement Deliverables and Services including without limitation cost incurred by the State for continuation of EBT Services provided by the incumbent EBT contractor; and
- b. All reasonable administrative costs directly related to the termination including but not limited to the costs of reprocurement.

19.3 Withholds

In the event of a termination for default, the State may withhold from any amounts due the Contractor for such Deliverables or Services such sum as the State determines to be necessary to protect the State against loss or liability. The State will make a reasonable effort to mitigate damages sustained.

19.4 Contractor Ineligibility to Bid

If the State is required to reprocure or acquire from another vendor or vendors any Deliverable or Service covered by this Contract due to a termination for default of the Contractor, the Contractor shall be ineligible to bid on the reprocurement(s), in whole or in part.

19.5 Wrongful Termination for Default

If, after Notice of termination for default, it is determined by the State or a court of competent jurisdiction that the Contractor was not in default or that the Contractor's failure to perform was due to causes beyond its control and without any material error or negligence of the Contractor or any of its Subcontractors or suppliers, the Notice of termination may be deemed by the State to have been issued as a termination for the convenience of the State, and the rights and obligations of the parties shall be governed accordingly.

19.6 Termination for Convenience

The State may terminate, upon 30 days Notice to Contractor, performance of work under this Contract for its convenience in whole or, from time to time, in part, if the Director of the Office of Systems Integration, or designee, determines that a termination is in the State's interest. The Director of the Office of Systems Integration, or designee, shall terminate by delivering to the Contractor a Notice of termination specifying the extent of termination and the effective date thereof. Upon such Notice and in the time designated by the State in its Notice, the Contractor shall wind down and cease its services as quickly and efficiently as possible, without performing unnecessary Services and by minimizing negative effects on the State from such winding down and cessation of Services. If this Contract is so terminated, the State shall be liable for payment in accordance with the terms of this Contract for Services rendered prior to the effective date of termination and for expenses as described in Section 19.8.3 of this Contract. The State shall be relieved of any further obligations related to such Services.

19.7 Termination by Mutual Agreement

This Contract may be terminated by mutual written agreement of both parties.

19.8 Termination Procedure

19.8.1 Available Rights and Remedies

The rights and remedies of the State provided in Sections 19.2, 19.3, and 19.4 of this Contract shall apply in the event of termination of this Contract for default or convenience, shall not be exclusive, and are in addition to any other rights and remedies by law or equity or under this Contract.

19.8.2 Disposition of Property

In the event of termination, the Contractor shall deliver or convey title to the State or to another entity named by the State any property specifically produced under this Contract, including without limitation Developments, the Deliverables, work in process, partially completed plans, drawings, and information as designated by the State. The Contractor shall not be required to deliver any of the Contractor Licensed Materials.

19.8.3 Contractor Compensation

In the event of termination, the State shall pay the Contractor the Charges stated in this Contract for the Deliverables and Services for which the State has given its Acceptance, subject to the State's rights and remedies herein. If the termination is for convenience, the State shall, in its discretion, also pay reasonable Charges the Contractor can demonstrate to the satisfaction of the State have resulted from the termination. In determining the reasonable Charges, the Contractor shall use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices.

19.8.4 Determination of Amount Due

In arriving at the amount due to the Contractor there shall be deducted all payments to the Contractor under the terminated portion of this Contract and any claim which the State has against the Contractor under this Contract.

19.8.5 Termination Claims

If the termination is for convenience and the parties are not able to agree on such amounts, the Contractor shall submit a termination claim specifying the amounts claimed due because of the termination for convenience together with cost or pricing data supporting the claim. If the Contractor fails to file a termination claim within 90 Days from the effective date of termination, the State may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay to the Contractor the amount determined.

19.8.6 Assistance During Termination

Upon and following termination or expiration of this Contract, each party will assist the other party in the orderly termination of this Contract and the transfer of all assets,

tangible and intangible, and of all Services, as may facilitate the orderly, nondisrupted continuation of the Project. Towards this end, the Contractor shall assist the State at the State's request in transitioning the Services to another contractor in accordance with the End-of-Contract Changeover Plan as described in Exhibit A of this Contract. At the request of the State and subject to the Work Authorization process, the Contractor shall continue to perform the duties and responsibilities of this Contract following the normal expiration date of this Contract for a period not to exceed 180 Days.

19.8.7 Contractor Actions After Notice of Termination

After the Contractor receives a written Notice of termination, and except as otherwise directed by the State Project Director, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under Section 19 of this Contract:

- a. Stop work on the date and to the extent specified in a Notice of termination;
- b. Place no further orders and enter into no subcontracts for materials, services, or facilities except as necessary to complete the portion of the work not terminated;
- c. Terminate all subcontracts to the extent they relate to the work terminated;
- d. Settle all outstanding liabilities and provide termination settlement proposals arising from the termination of subcontracts, the approval or ratification of which by the State will be final for purposes of Section 19 of this Contract;
- e. Complete performance of the work not terminated; and
- f. Take any action that may be necessary or as the State may direct for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which the State has or may acquire an interest and to mitigate any potential damages or requests for adjustment or termination settlement to the maximum practical extent.

20 General Provisions

20.1 Americans with Disabilities Act

The Contractor assures the State that it shall comply with the Americans with Disabilities Act (ADA) of 1990 Public Law 101-336, 28 Code of Federal Regulations (CFR) Part 35, which prohibits discrimination on the basis of disability, as well as applicable regulations and guidelines issued pursuant to the ADA (42 U.S.C. 12101 et seq.).

20.2 Assignment

The Contractor may not assign or transfer this Contract or any of its rights hereunder, nor delegate any of its duties hereunder, without the prior written consent of the State. Any attempted assignment, transfer, or delegation in contravention of this Contract Section shall be null and void. This Contract shall inure to the benefit of and be binding upon the parties hereto and their permitted successors and assigns. For purposes of this Contract Section, the State will not unreasonably prohibit the Contractor from freely

assigning its right to payment, provided that the Contractor remains responsible for its obligations hereunder.

20.3 Assignment of Antitrust Actions

Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:

- a. In submitting a bid to the State, the bidder (i.e., the Contractor) offers and agrees that if the bid is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the California Business and Professions Code), arising from purchases of goods, materials or other items, or Services by the bidder for sale to the State pursuant to the bid. Such assignment shall be made and become effective at the time the State tenders final payment to the bidder.
- b. If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
- c. Upon demand in writing by the assignor, the assignee shall, within one (1) year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured hereby, or (b) the assignee declines to file a court action for the cause of action.

20.4 Authority

The Contractor shall have no authority to bind, obligate, or commit the State by any representation or promise without the prior written approval of the State Project Director.

20.5 Authorization

The Contractor warrants that it has full power and authority to enter into and perform this Contract, and the person signing this Contract on behalf of the Contractor has been properly authorized and empowered to enter into this Contract and to bind the Contractor to each and every one of the terms, conditions, and obligations set forth herein.

20.6 Binding Effect

Each party agrees that this Contract binds it and each of its officers, employees, agents, independent contractors, and representatives.

20.7 Child Support Compliance Act

The Contractor acknowledges in accordance with Public Contract Code Section 7110 that:

- a. The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement including, but not limited to, disclosure of information and compliance with earnings assignment orders as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- b. The Contractor to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

20.8 Compliance with Health and Safety and Related Laws

The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. The State of California, including but not limited to the State agency executing this Contract, shall not be held responsible in any way for claims filed by the Contractor or its employees for services performed under the terms of this Contract.

20.9 Conflicts Between Documents; Order of Precedence

In the event that there is a conflict between the documents comprising this Contract, the order of precedence shall be as follows:

- a. Contract Amendments
- b. Work Authorizations
- c. The terms and conditions in the body of this Contract
- d. The Exhibits to this Contract, excluding Exhibit J of this Contract, in response to the RFP
- e. The Deliverables provided pursuant to Exhibit C of this Contract
- f. All other Deliverables
- g. Exhibit J of this Contract in response to the RFP

20.10 Conflict of Interest

20.10.1 Appearance of Conflict

The Contractor acknowledges that, in governmental contracting, even the appearance of a conflict of interest is harmful to the interest of the State. Thus, the Contractor agrees to refrain from any practices, activities, or relationships which could reasonably be considered to be in conflict with the Contractor fully performing its obligations to the State under the terms of this Contract, without the prior written approval of the State

Project Director. In the event the Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, the Contractor shall submit to the State Project Director a full disclosure statement setting forth the relevant details for the State's consideration and direction. Failure to promptly submit a disclosure statement shall be grounds for termination of this Contract.

20.10.2 Current or Former State Employees

The Contractor acknowledges it is aware of and shall take no action which causes State employees or officers to be in violation of the following provisions regarding current or former State employees. If the Contractor has any questions on the status of any person rendering services or involved with this Contract, the Contractor will contact the State Project Director immediately for clarification.

20.10.2.1 Current State Employees (Public Contract Code Section 10410)

No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency unless the employment, activity, or enterprise is required as a condition of regular State employment.

No State officer or employee shall contract on that person's own behalf as an independent contractor with any State agency to provide goods or services.

20.10.2.2 Former State Employees (Public Contract Code Section 10411)

- a. For the two (2) year period from the date of leaving State employment, no former State officer or employee may enter into a contract in which that person was engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to this Contract while employed in any capacity by any State agency.
- b. For the 12-month period from the date of leaving State employment, no former State officer or employee may enter into a contract with any State agency if that person was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to that person leaving State service.

20.11 Counties are Independent Entities

California Counties are independent and separate legal entities from the State. As a result, any particular County's preparedness, cooperation, and success in becoming operational with EBT is beyond the control of the Contractor or the State. The State shall not be liable to the Contractor or in default under this Contract if a County is not prepared or is late in becoming operational with EBT as scheduled and the Contractor shall not be liable for delays caused by the acts or omissions of a County unless the Contractor would otherwise be able to mitigate the effects of the delay caused by such acts or omissions.

20.12 Dispute Resolution

20.12.1 Process

20.12.1.1 Efforts to Resolve Disputes

The parties shall use their best, good-faith efforts to cooperatively and informally resolve potential disputes and problems that arise in connection with this Contract. When a bona fide dispute arises the process contained in this Contract Section shall be followed. The Contractor Project Manager shall submit to the State Project Director a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Contract, unless the State, on its own initiative, has already rendered such a final decision. The Contractor's written demand shall contain and be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data is accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the State is liable. The Contractor shall submit the demand within 45 Days from the time the Contractor discovers, or reasonably should have discovered, the action or occurrence giving rise to a dispute or the right to dispute is waived. If the Contractor is not satisfied with the decision of the State Project Director, the Contractor may appeal the decision to an Executive Committee consisting of the executives of the OSI, the CDSS, and the DGS.

20.12.1.2 Contractor Shall Diligently Proceed with Performance

Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of Equipment or providing of Services in accordance with the State's instructions. The Contractor's failure to diligently proceed in accordance with the State's instructions shall be considered a material breach of this Contract.

20.12.1.3 Final Decision

Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the State Project Director or Executive Committee if an appeal was made. If the State fails to render a final decision within ninety (90) Days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 Days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

20.12.2 Exceptions

The parties agree that, except as provided in Section 15.4 of this Contract, the dispute process described in Section 20.12.1 of this Contract shall precede any action in a

judicial or quasi-judicial tribunal. This dispute resolution process is the sole administrative remedy available under this Contract.

20.13 Domestic Partners

The Contractor certifies that it is in compliance with Public Contract Code Section 10295.3 with regard to benefits for domestic partners. For contracts executed or amended after July 1, 2004, the Contractor may elect to offer domestic partner benefits to the Contractor's employees in accordance with Public Contract Code Section 10295.3. However, the Contractor cannot require an employee to cover the costs of providing any benefits, which have otherwise been provided to all employees regardless of marital or domestic status.

20.14 Drug-Free Workplace Certification

The Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (California Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a);
- b. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. The person's or organization's policy of maintaining a drug-free workplace;
 - iii. Any available counseling, rehabilitation, and employee assistance programs; and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
- c. Provide as required by Government Code Section 8355(a)(3), that every employee who works on the proposed or resulting Contract:
 - i. Will receive a copy of the company's drug-free policy statement; and
 - ii. Will agree to abide by the terms of the company's statement as a condition of employment on this Contract.

20.15 Electronic Waste Recycling Act of 2003

The Contractor certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. The Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.

20.16 Entire Contract; Acknowledgement of Understanding

The State and the Contractor acknowledge and agree to the following:

- a. That they have read this Contract, understand it, and agree to be bound by its terms and conditions; and
- b. That this Contract, including any documents incorporated herein by express reference, is the complete and exclusive statement of the agreement between the parties relating to the subject matter hereof and supersedes all proposals, letters of intent or prior Contracts, oral or written, and all other communications and representations between the parties relating to the subject matter of this Contract.
- c. Notwithstanding Section 20.16(b) of this Contract, the parties agree that if this Contract is silent as to an issue concerning the Project and that issue is addressed in the RFP, then the parties shall comply with the terms in the RFP and the Contractor's corresponding response to those terms in its proposal.

20.17 Expatriate Corporations

The Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10826 and 10826.1, and is eligible to contract with the State.

20.18 Forced, Convict, and Indentured Labor

20.18.1 Sweat-Free Code of Conduct

20.18.1.1 Declaration

The Contractor declares under penalty of perjury that no Equipment, materials, or supplies furnished to the State pursuant to this Contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor, or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor, or exploitation of children in sweatshop labor. The Contractor further declares under penalty of perjury that it adheres to the Sweat-free Code of Conduct as set forth on the California Industrial Relations website located at www.dir.ca.gov and Public Contract Code Section 6108.

20.18.1.2 Cooperation

The Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the California Department of Industrial Relations, or the California Department of Justice to determine the Contractor's compliance with the requirements under subsection 20.18.1.1 of this Contract Section.

20.19 Force Majeure

20.19.1 Causes of Delays

Except for defaults of subcontractors at any tier, neither the Contractor nor the State shall be liable for any failure to perform if the failure to perform this Contract arises from causes beyond the reasonable control and without the fault or negligence of the nonperforming Party. Examples of such causes include, but are not limited to:

- a. Acts of God or of the public enemy; or
- b. Acts of the federal, state, or county government in either its sovereign or contractual capacity.

20.19.2 Subcontractors

If the failure to perform is caused by the default of a Subcontractor at any tier, and if the cause of the default is beyond the reasonable control of both the Contractor and Subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted goods or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

20.20 Governing Law and Venue

This Contract shall be governed in all respects by and construed in accordance with the laws of the State of California. By execution of this Contract, the Contractor acknowledges the exclusive jurisdiction for any action hereunder shall be the Superior Court for the State of California. The exclusive venue of any action hereunder shall be in the Superior Court for Sacramento County, California.

20.21 Headings

The headings throughout this Contract are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Contract.

20.22 Independent Contractor Relationship

The Contractor shall perform its duties hereunder as an independent contractor and not as an employee, officer, or agent of the State. The Contractor shall, in its sole discretion, determine when, where, and how Services under this Contract are performed, including but not limited to, supervising its employees' or Subcontractors' methods of working and otherwise controlling their working conditions, and, except where otherwise provided, furnishing their tools and equipment. The Contractor acknowledges and certifies that its directors, officers, partners, employees, Subcontractors, affiliates, and agents are not officers, employees, or agents of the State or the State of California. The Contractor shall not hold itself out as nor claim to be an officer, employee, or agent of the State of California by reason of this Contract. Neither party shall have any right, power, or authority to create any obligation, express or implied, on behalf of the other except as defined in this Contract or as mutually agreed

to under the terms of this Contract. The Contractor shall pay when due all required employment taxes and income tax withholding, including all federal and state income tax and local head tax and any monies paid pursuant to this Contract. The State shall not pay federal taxes, Social Security taxes, or labor and industries contributions for the Contractor. The Contractor's employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to State employees.

20.23 Legal and Regulatory Compliance and Litigation

20.23.1 Compliance

In the performance of this Contract, the Contractor shall comply with all applicable federal, State, County and local laws, regulations, codes, standards, and ordinances. If the System or Services performed by the Contractor are found to be in violation of such laws, regulations, codes, standards, and ordinances in effect at the Execution Date, the Contractor shall solely be responsible for bringing the Services into compliance at no additional cost to the State. The Contractor further agrees to indemnify the state against any loss, cost, damage, or liability by reason of the Contractor's violation of this provision.

20.23.2 World Trade Organization Agreement

This Contract is subject to the requirements of the World Trade Organization Agreement.

20.24 Litigation

20.24.1 Notice of Litigation

The Contractor shall promptly notify the State in the event that the Contractor learns of any actual litigation in which it is a party defendant in a case which involves Services provided under this Contract. The Contractor shall promptly, after being served with a summons, complaint, or other pleading which has been filed in any federal or State court or administrative agency, deliver copies of such document(s) to the EBT Project Director. The term "litigation" includes but is not limited to an assignment for the benefit of creditors and filings in bankruptcy, reorganization, or foreclosure.

20.24.2 Costs

In the case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the Contractor in connection with this Contract, the Contractor shall pay all costs and expenses incurred by or imposed on the State, including attorney fees, to the extent arising from the acts or omissions of the Contractor, its officers, employees, agents, or Subcontractors.

20.25 Maintenance and Audit of Records

20.25.1 Maintenance of Records

The Contractor and its Subcontractors shall maintain a complete file of all records, documents, communications, and other materials which pertain to the Project or the

delivery of Services under this Contract and shall be readily separable from other Contractor records. Financial records shall be maintained according to generally accepted accounting principles. The Contractor shall maintain for a period of six (6) years after the expiration or termination of this Contract the above-described records and records that are sufficient to:

- a. Document the performance of all acts required by this Contract;
- b. Substantiate the Contractor's statement of its organization's structure, tax status, capabilities, and performance;
- c. Demonstrate accounting procedures and practices which sufficiently and properly reflect all expenditures made by the Contractor to perform under this Contract, and all direct and indirect costs of any nature invoiced in the performance of this Contract;
- d. Ascertain that personnel policies, procedures, and practices were in compliance with this Contract and applicable federal and State law; and
- e. Ascertain that all taxes and insurance required by federal and State law and by the terms of this Contract were paid by the Contractor.

20.25.2 Right to Audit

The Contractor agrees that auditors from the OSI, the DGS, the California Bureau of State Audits, the FNS, or their designated representative(s) shall have the right to inspect, review, and copy any records and supporting documentation pertaining to performance of, compliance with, or quality assurance under this Contract at any time during or after the performance of this Contract up to six (6) years after the termination or expiration of this Contract. The Contractor agrees to maintain such records for possible audit for a minimum of six (6) years after final payment, unless a longer period of records retention is stipulated. The Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.

20.25.3 Notice of Review

Whenever reasonably possible, the State shall give the Contractor notice of any monitoring, auditing, observation, or visits by authorized persons to the Contractor's place(s) of business. In addition to other records, such audit may include an audit of the books and records of the Contractor, or any of its Subcontractors or prospective Subcontractors, which are related to the cost or pricing data to the extent required by federal or State laws or regulations including but not limited to 7 CFR Part 277.18, and this Contract or any subcontracts. Upon notification, except in exceptional circumstances, by the State to the Contractor, during any working day between the hours of 8:00 a.m. to 5:00 p.m., local time, all documentation, including accounting records, related to this Contract shall be available for and subject to review, inspection, copying (at the State's expense), and audit by the State or the FNS and other personnel duly authorized by the State.

20.25.4 State Ownership

All such records, documents, communications, and other materials shall be the property of the State unless otherwise specified herein and shall be maintained by the Contractor and made, to the extent reasonably feasible, accessible within Sacramento County on behalf of the State, for a period of six (6) years from the date of final payment under this Contract, or for such further period as may be necessary to resolve any matters which may be pending, or until an audit has been completed with the following qualification: If an audit by or on behalf of the federal or State government has begun but is not completed at the end of the six (6) year period, or if audit findings have not been resolved after a six (6) year period, the materials shall be retained until the resolution of the audit findings.

20.25.5 Subcontracts

The records retention, review, inspection, audit, interview, copying, and other requirements of this Contract Section shall be incorporated by the Contractor in any of its subcontracts.

20.26 Modifications

No modification, amendment, alteration, or variation to the terms of this Contract and no waiver of any provisions hereof shall be valid unless in writing and signed by the State Project Director and a duly authorized representative of the Contractor and approved by the DGS. No oral understanding or agreement not incorporated into this Contract shall be binding on any of the parties hereto. The Contractor shall not be authorized to commence performance until such approval has been obtained.

20.27 Nondiscrimination**20.27.1 Employment**

During the performance of this Contract, the Contractor and its Subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including Human Immunodeficiency Virus [HIV] and Acquired Immunodeficiency Syndrome [AIDS]), medical condition (including cancer), age, marital status, and denial of family care leave. The Contractor and its Subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Contractor and its Subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. The Contractor and its Subcontractors shall give written notice of their obligations under this Contract Section to labor organizations with which they have a collective bargaining or other Contract. The Contractor shall include the nondiscrimination and compliance

provisions of this Contract Section in all subcontracts to perform work under this Contract.

20.27.2 Government Code Section 11135

To the extent that this Contract falls within the scope of Government Code Section 11135, the Contractor hereby agrees to respond to and resolve any complaint brought to its attention, regarding accessibility of its Services.

20.28 Notice of Delay

When the Contractor has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, the Contractor shall, within five (5) Business Days, give notice thereof, including all relevant information with respect thereto, to the State.

20.29 Notices

Notice will deemed to be given by the parties under this Contract if in writing and delivered personally or by messenger, or mailed by first-class, registered, or certified mail, postage prepaid, to the addresses noted in this Contract Section. Each party will provide notice to the other of changes to such addresses.

Notice Address for Contractor: Name
 Company
 Address
 City, State ZIP

Notice Address for the State: State Project Director
 EBT Project
 Office of Systems Integration
 P.O. Box 138014
 Sacramento, CA 95813

Notice Address for Litigation: California Department of Social Services
 Legal Division, Office of the General Counsel
 744 P Street, MS 4-161
 Sacramento, CA 95814

20.30 Priority Hiring Considerations

If this Contract includes Services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Public Contract Code Section 10353.

20.31 Publicity

The Contractor shall not refer to the State of California, any office, agency, or officer thereof, or any State employee, including the head of the State, the State Procurement

Officer, or to the Services or Deliverables, or both, provided under this Contract, in any of the Contractor's brochures, advertisements, or other publicity of the Contractor without the prior written consent of the State Project Director. The Contractor agrees to submit to the State Project Director all advertising, sales promotions, news releases, and other publicity matters relating to this Contract or any Deliverable or Service furnished by the Contractor wherein the State's name is mentioned or language used from which the connection of the State's name therewith may, in the State's judgment, be inferred or implied. All media contacts with the Contractor about the subject matter of this Contract shall be referred to the State Project Director.

20.32 Recycling

The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Public Contract Code Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Public Contract Code 12205).

20.33 Remedies

No remedy conferred by any of the specific provisions of this Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

20.34 Safety and Accident Prevention

In performing work under this Contract on State premises or other Sites, the Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. The Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance the default provisions hereof.

20.35 Severability

If any term or condition of this Contract shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Contract shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law. To that end, the provisions of this Contract are declared to be severable. Either party having knowledge of such term or condition shall promptly inform the other of the presumed inapplicability of such term or condition.

20.36 Sovereign Immunity

The parties expressly agree that no provision of this Contract is in any way intended to constitute a waiver by the State of any immunities from suit or from liability that the State may have by operation of law.

20.37 Subcontractors

20.37.1 Process

The Contractor may, with prior written permission from the State Project Director, enter into subcontracts with third parties for the performance of any part of the Contractor's duties and obligations. Any such permission may be rescinded at the State's discretion. Subcontractors identified in the Contractor's Proposal shall be deemed to have prior written permission unless the State rejects such Subcontractor in writing. The Contractor is responsible and liable for the proper performance of and the quality of any work performed by any and all Subcontractors. In addition, the Contractor's use of any Subcontractor shall not cause the loss of any warranty from the Contractor or any software manufacturer or provider. The State reserves the right to reject or refuse admission to any of the Contractor or Subcontractor personnel whose workmanship, in the judgment of the State, is deemed to be substandard. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the State for any breach in the performance of the Contractor's duties. Any permitted Subcontractor must submit to the State a tax clearance certificate from the Franchise Tax Board showing that all delinquent taxes have been paid. Subcontracts permitted by the State shall be subject to the requirements of this Contract.

20.37.2 Subcontractor Warranty

The Contractor warrants and agrees that any subcontract resulting from its performance under the terms and conditions of this Contract shall include a provision that the Subcontractor will abide by the terms and conditions hereof, as well as all other applicable federal and State laws, and rules and regulations pertinent hereto that have been or may hereafter be established. Also, the Contractor warrants and agrees that all subcontracts shall include a provision that the Subcontractor shall indemnify and hold harmless the State. Any contract between the Contractor and its Subcontractors shall require the Subcontractors to adhere to the same Performance Standards and other standards required of the Contractor. Subcontractors must be certified to work on any equipment for which their services are obtained. Upon written request of the State Project Director, the Contractor shall provide proof of compliance with this Contract Section.

20.38 Reference and Background Checks on Staff and Subcontractors

Due to the confidential nature of the information and materials which will be accessible to the Contractor, the State may conduct a reference check on the Contractor Staff to be used to provide the Services. The State also reserves the right to conduct criminal history, background checks, and fingerprint checks on the Contractor Staff. The State reserves the right in its sole discretion to reject or secure the replacement of the

Contractor Staff from the Project as a result of information produced by any such checks.

20.39 Survival

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the performance hereof by the parties hereunder shall so survive the completion of the performance, cancellation, or termination of this Contract. In addition, the terms of Section 10.3, Four-Digit Date Compliance; Section 13, Insurance; Section 14, State Property; Section 15, Confidential Information; Section 16, Ownership and Rights; Section 17, Indemnifications; Section 19.8, Termination Procedure; and Section 20, General Provisions, of this Contract shall survive the termination of this Contract.

20.40 Third-Party Beneficiaries

It is expressly understood and agreed that the enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the Contractor. Nothing contained in this Contract shall give to or allow any claim or right of action whatsoever by any third person. It is the express intention of the State and the Contractor that any person or entity, other than the State or the Contractor, receiving Services or Benefits shall be deemed an incidental beneficiary only.

20.41 Use Tax Collection

In accordance with Public Contract Code Section 10295.1, the Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. The Contractor further certifies that it will immediately advise the State of any change in its retailer's or seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of Public Contract Code Section 10295.1.

20.42 Waiver

Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.

20.43 Water or Air Pollution Violation

Under the State laws, the Contractor shall not: (i) violate any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (ii) be subject to a cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (iii) finally be determined to be in violation of provisions of federal law relating to air or water pollution.

EXHIBIT A: STATEMENT OF WORK

This Exhibit A, Statement of Work, contains the Specifications for the California EBT System functionality and support Services as required by the State and this Contract. It includes business and technical requirements to support the Transition and Ongoing Operations of the System in California.

(In addition to the language below, the exhibit will contain RFP Section 6, Business and Technical Requirements.)

- 6.1 Governing Regulations
- 6.2 Project Staffing
- 6.3 Project Management
- 6.4 Account Structure
- 6.5 Transaction Processing
- 6.6 Third-Party Processors
- 6.7 Administrative Application
- 6.8 Correction Requests and Adjustments
- 6.9 Automated Response Unit/Customer Service Call Center
- 6.10 Client Website
- 6.11 Card Issuance and Card Specifications
- 6.12 Personal Identification Numbers
- 6.13 Cash Access
- 6.14 Restaurant Meals Program
- 6.15 Retailer Conversion and Ongoing Support
- 6.16 Settlement and Reconciliation
- 6.17 Training
- 6.18 EBT Host System
- 6.19 EBT Database Conversion
- 6.20 EBT System Security
- 6.21 State and County EBT Administrative Network
- 6.22 Host-to-Host and Batch Interfaces
- 6.23 SARS Interface
- 6.24 System Testing
- 6.25 EBT Switch
- 6.26 Capacity Planning
- 6.27 EBT-Only POS Devices
- 6.28 Wireless POS Devices
- 6.29 Balance Inquiry-Only (BIO) POS Devices
- 6.30 Business Continuity
- 6.31 EBT Disaster Services
- 6.32 End-of-Contract Changeover
- 6.33 Reports
- 6.34 Document Management

- 6.35 Deficiency Management
- 6.36 Configuration Management

EXHIBIT B: FINANCIAL MATTERS

Best Price CPCM			
Caseload Range	Food Stamp Only CPCM	Cash Only CPCM	Combined Food Stamp and Cash CPCM
1,000,000 – Up			
600,000 – 999,999			
0 – 599,999			
Best Price Primary Location:			
Best Price Backup Location:			
CPCM with Onshore Primary and Back-Up Call Centers			
Caseload Range	Food Stamp Only CPCM with Onshore Call Center	Cash Only CPCM with Onshore Call Center	Combined Food Stamp and Cash CPCM with Onshore Call Center
1,000,000 – Up			
600,000 – 999,999			
0 – 599,999			
Onshore Primary Location:			
Onshore Backup Location:			
CPCM with California-Based Primary and Back-Up Call Centers			
Caseload Range	Food Stamp Only CPCM with California Call Center	Cash Only CPCM with California Call Center	Combined Food Stamp and Cash CPCM with California Call Center
1,000,000 – Up			
600,000 – 999,999			
0 – 599,999			
California-Based Primary Location:			
California-Based Backup Location:			

EXHIBIT B, FINANCIAL MATTERS (CONTINUED)

Transition	
Cost Component	Cost
Transition	
ATM Cash Withdrawal Fee	
Cost Component	Cost
ATM Cash Withdrawal Fee	
Balance Inquiry Fee	
Cost Component	Cost
Balance Inquiry Fee	
Labor Rates for Additional Tasks	
Classification	Rate
Project Manager	
Technical Manager	
Systems Analyst	
Programmer	
Business Analyst	
Administrative Support	
Adding a Language to the Client Website	
Cost Component	Cost
Add Language to the Client Website	
Unanticipated Costs	
Cost Component	Cost
Unanticipated Costs for Work Authorizations	

EXHIBIT C: DELIVERABLE AND MILESTONE DATES

The following is a partial list of Deliverables and milestone dates that would be included in the Project Workplan.

Deliverable	Milestone Date
Staff Management Plan	30 Days after Execution Date
Project Management Plan	30 Days after Execution Date
Quality Assurance Plan	30 Days after Execution Date
Risk Management Plan	30 Days after Execution Date
Ongoing Operations Forms Packet	According to Project Workplan
Network Certification Plan	According to Project Workplan
Requirements Specification	According to Project Workplan
Error Corrections and Adjustments Manual	According to Project Workplan
ARU Documentation	According to Project Workplan
Customer Service Manual	According to Project Workplan
Card Design Document	According to Project Workplan
Administrative Equipment Maintenance Schedule	According to Project Workplan
County Change in Cash Access Plan	According to Project Workplan
County Cash Access Plans	According to Project Workplan
Retailer Conversion Plan	According to Project Workplan
Model Retailer Agreement	30 Days after Execution Date
Retailer Management Plan	According to Project Workplan
Settlement and Reconciliation Plan	According to Project Workplan
Training Plan	According to Project Workplan
Administrative User's Guide	According to Project Workplan
Detailed System Design	According to Project Workplan
Statewide Transition Plan	30 Days after Execution Date
Database Conversion Plan	According to Project Workplan
Database Conversion Test Plan	According to Project Workplan
System Security Plan	According to Project Workplan
Administrative Network Conversion Plan	According to Project Workplan
EBT Interface Document	According to Project Workplan
Master Test Plan	According to Project Workplan

Deliverable	Milestone Date
Interface Test Plan	According to Project Workplan
Test Scripts	According to Project Workplan
Integration Test Plan	According to Project Workplan
User Acceptance Test Plan	According to Project Workplan
System Capacity Management Plan	According to Project Workplan
Continuity of Business Plan	According to Project Workplan
Disaster Services Plan	According to Project Workplan
End-of-Contract Changeover Plan	According to Project Workplan
Reports Catalog	According to Project Workplan
Deficiency Management Plan	According to Project Workplan
Configuration Management Plan	According to Project Workplan
Functional Demonstration	According to Project Workplan
Requirements Validation	According to Project Workplan
System Acceptance	According to Project Workplan
User Acceptance	According to Project Workplan
Cutover	According to Project Workplan but no later than 18 months following the Execution Date

EXHIBIT D: EQUIPMENT

Administrative Equipment		
Type of Equipment	Manufacturer	Model #

Retailer Equipment		
Type of Equipment	Manufacturer	Model #

EXHIBIT E: CERTIFICATIONS

I, the official named below CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to and do legally bind the Contractor to comply with the clause(s) listed below. This certification is made under the laws of the State of California.

Official's Name:	
Date Executed:	Executed in the County of:
Contractor's Signature:	
Title:	
Legal Business Name:	Federal ID Number:

1. Statement of Compliance

The Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Government Code 12990 (a-f) and California Code of Regulations, Title 2, Section 8103). Refer to Contract Section 20.27.

2. Drug-Free Workplace

The Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
 1. The dangers of drug abuse in the workplace;
 2. The person's or organization's policy of maintaining a drug-free workplace;

3. Any available counseling, rehabilitation, and employee assistance programs: and
 4. Penalties that may be imposed upon employees for drug abuse violations.
- c. Provide that every employee who works on the proposed Contract will:
1. Receive a copy of the company's drug-free policy statement; and
 2. Agree to abide by the terms of the company's statement as a condition of employment on this Contract.

Failure to comply with these requirements may result in suspension of payments under this Contract or termination of this Contract or both and the Contractor or grantee may be ineligible for award of any future State contracts if the Director of OSI or designee determines that any of the following has occurred: (i) the Contractor or grantee has made false certification, or (ii) violates the certification by failing to carry out the requirements as noted above. (Government Code 8350 et seq.)

3. National Labor Relations Board

The Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with Public Contract Code Section 10296.

4. Workers' Compensation

The Contractor certifies adherence with the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with such provisions before commencing the performance of the work of this Contract.

5. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower-Tier Covered Transactions

The Contractor certifies adherence with the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participant's responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

EXHIBIT F: SAMPLE WORK AUTHORIZATION**WORK AUTHORIZATION No. XXX**Change Request No. (Delete if none)

EBT Contract No. _____

TITLE (Enter title)

Date	Stage	Description
	1	Date to the Contractor requesting preliminary pricing.
	2	Date to the Contractor requesting final pricing.
	3	Date to the Contractor for signature.

BACKGROUND

(Describe the current situation and the problem.)

FULL WORK DESCRIPTION

(Describe the solution and list the business requirements.)

DELIVERABLES

Below is a list of Deliverables identified by the State that requires development or revision by the Contractor due to this Work Authorization. The Parties understand and agree that additional Deliverables requiring development or revision may be identified at a later date.

The Contractor shall exercise a good-faith effort to identify and list in this Work Authorization Deliverables that require development or are impacted by this Work Authorization.

The Contractor shall develop or revise, as applicable, each identified Deliverable in accordance with Section ___ of this Contract. The Contractor shall complete the development or revision within a reasonable timeframe to be mutually agreed upon by the Parties.

New Deliverables

- Work Authorization Design Specification (WADS)
- Workplan

- Test scenarios and test results

Deliverable Revisions

Deliverable Title	Approved Revision Expectation Document (RED)	Deliverable Update (ready for distribution prior to Work Authorization implementation)
1.		
2.		
3.		

REFERENCES

- (Contract sections, other Work Authorizations, Request for Proposal, etc.)

SCHEDULE DATES

Estimated Start Date	Estimated Completion Date *

* Completion date is defined as the date the Contractor implements change(s) into the production environment. The completion date does not imply Acceptance Criteria is met or the Work Authorization is approved for payment.

WORK AUTHORIZATION PROPOSED WORKPLAN

State's Proposed Workplan Schedule	
Milestone	Estimated Completion Date *
Initiation Deliverable	
Work Authorization Execution (requirements review/approval)	
Deliverable Workplan	
Implementation Deliverables	

* Estimated completion dates are determined by the State in coordination with the Contractor; however, the actual dates will reside in the mutually agreed upon Workplan to be provided 30 days from the date of Work Authorization approval to commence work.

PRICING***Fixed-Price Cost***

Personnel to be Assigned	Job Classification/Skill Level	Labor Hours	Labor Rate Per Hour	COST
1.				
2.				
3.				

Time and Materials Cost

Personnel to be Assigned	Job Classification/Skill Level	Materials	Labor Hours	Labor Rate Per Hour	COST
1.					
2.					
3.					

Option selected by the State

- ☐ Fixed Price
- ☐ Time and Materials

CONTRACTOR TASK AND RESPONSIBILITIES

1. (to be completed by the Contractor)
2. (to be completed by the Contractor)

COMPLETION CRITERIA

1. (to be completed by the State)
2. (to be completed by the State)

STATE RESPONSIBILITIES

1. Participate in and oversee the Contractor tasks and responsibilities.
2. (to be completed by the State)

This task will be performed in accordance with this Work Authorization and the applicable provisions of EBT Contract No. _____.

APPROVALS

STATE OF CALIFORNIA

CONTRACTOR

< NAME >
EBT Project Director
Office of Systems Integration

< NAME >
Project Director
< Company Name >

Date

Date

< NAME >
Office of Legal Services
Department of General Services

Date

ALLOCATION OF COSTS – To be completed by the EBT Project Office.

Check appropriate box for share of costs.

<input type="checkbox"/> State Only		<input type="checkbox"/> PCA 81660C (M&O)		
<input type="checkbox"/> State and All Counties		<input type="checkbox"/> PCA 81660C (M&O)		
<input type="checkbox"/> County Specific		<input type="checkbox"/> PCA 81660C (M&O)		
<input type="checkbox"/> Consortium Specific		<input type="checkbox"/> PCA 81660C (M&O)		
Check the consortium, county, or counties that will share in ongoing operations cost:				
<input type="checkbox"/> C-IV	<input type="checkbox"/> CalWIN	<input type="checkbox"/> Leader	<input type="checkbox"/> ISAWS	
<input type="checkbox"/> Alameda	<input type="checkbox"/> Alpine	<input type="checkbox"/> Amador	<input type="checkbox"/> Butte	<input type="checkbox"/> Calaveras
<input type="checkbox"/> Colusa	<input type="checkbox"/> Contra Costa	<input type="checkbox"/> Del Norte	<input type="checkbox"/> El Dorado	<input type="checkbox"/> Fresno
<input type="checkbox"/> Glenn	<input type="checkbox"/> Humbolt	<input type="checkbox"/> Imperial	<input type="checkbox"/> Inyo	<input type="checkbox"/> Kern
<input type="checkbox"/> Kings	<input type="checkbox"/> Lake	<input type="checkbox"/> Lassen	<input type="checkbox"/> Los Angeles	<input type="checkbox"/> Madera
<input type="checkbox"/> Marin	<input type="checkbox"/> Mariposa	<input type="checkbox"/> Mendocino	<input type="checkbox"/> Merced	<input type="checkbox"/> Modoc
<input type="checkbox"/> Mono	<input type="checkbox"/> Monterey	<input type="checkbox"/> Napa	<input type="checkbox"/> Nevada	<input type="checkbox"/> Orange
<input type="checkbox"/> Placer	<input type="checkbox"/> Plumas	<input type="checkbox"/> Riverside	<input type="checkbox"/> Sacramento	<input type="checkbox"/> San Benito
<input type="checkbox"/> San Bernardino	<input type="checkbox"/> San Diego	<input type="checkbox"/> San Francisco	<input type="checkbox"/> San Joaquin	<input type="checkbox"/> San Luis Obispo
<input type="checkbox"/> San Mateo	<input type="checkbox"/> Santa Barbara	<input type="checkbox"/> Santa Clara	<input type="checkbox"/> Santa Cruz	<input type="checkbox"/> Shasta
<input type="checkbox"/> Sierra	<input type="checkbox"/> Siskiyou	<input type="checkbox"/> Solano	<input type="checkbox"/> Sonoma	<input type="checkbox"/> Stanislaus
<input type="checkbox"/> Sutter	<input type="checkbox"/> Tehama	<input type="checkbox"/> Trinity	<input type="checkbox"/> Tulare	<input type="checkbox"/> Tuolumne
<input type="checkbox"/> Ventura	<input type="checkbox"/> Yolo	<input type="checkbox"/> Yuba		

Note: Information contained in this table is for State invoicing purposes only.

EXHIBIT G: FEDERAL ASSURANCES, NONCONSTRUCTION PROGRAMS

The Contractor shall at all times during the term of this Contract strictly adhere to all applicable federal and State laws and implementing regulations as they currently exist and may hereafter be amended. The Contractor acknowledges that the following laws are included into this Contract:

1. Age Discrimination Act of 1975 42 USC §§ 610 1, et seq.
2. Age Discrimination in Employment Act of 1967 29 USC §§ 621-634
3. Americans With Disabilities Act 42 USC §§ 12101, et seq. of 1990
4. Equal Pay Act 29 USC § 206(d)
5. Immigration Reform and Control Act of 1986 8 USC § 1324b
6. Section 504 of the Rehabilitation Act of 1973 29 USC § 794
7. Title VI of the Civil Rights Act of 1964 42 USC § 2002d
8. Title VII of the Civil Rights Act of 1964 42 USC § 2000e
9. Title IX of the Education Amendments of 1972 20 USC §§ 1681, et seq.
10. Section 306 of the Clean Air Act
11. Section 508 of the Clean Water Act

The Contractor will not discriminate against any person on the basis of race, color, national origin, age, sex, religion, or handicap, including Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions, in performance of work under this Contract, and all relevant sections of:

12. Executive Order 11246, as amended by Executive Order 11375.
13. Department of Labor Regulations (41 CFR Part 60).
14. Section 503 of the Rehabilitation Act of 1973, as amended.
15. Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974.
16. The Drug Abuse Office and Treatment Act of 1972.

17. The Comprehensive Alcohol Abuse and Alcoholism Treatment Act of 1970.
18. Sections 523 and 527 of the Public Health Service Act of 1912.
19. Title VIII of the Civil Rights Act of 1968 (42 USC § 3601).

The Contractor shall also comply with any and all laws and regulations prohibiting discrimination in the specific programs which are the subject of this Contract. In consideration of and for the purpose of obtaining any and all federal or State financial assistance, the Contractor makes the following assurances:

20. At all times during the performance of this Contract, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of the service, programs, or activities performed by the Contractor, or be subjected to any discrimination by the Contractor.
21. The Contractor shall take all necessary affirmative steps, as required by 45 CFR 92.36(e), to assure that small and minority businesses and women's business enterprises are used, when possible, as sources of supplies, Equipment, and Services purchased under this Contract.
22. As required by Executive Order 12549, the Contractor certifies to the best of its knowledge and belief that it, its principals, agents, and Subcontractors:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from performing the terms of this Contract by a government entity, either federal, State, or local.
 - b. Have not within a three (3) year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State, or local) transaction or contract under a public transaction, violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, State, or local) with commission of any of the offenses enumerated in paragraph b of this section; and
 - d. Have not within a three-year period preceding this Contract had one or more contracts with a public agency terminated for cause or default.
23. The Contractor certifies that it will provide a drug-free workplace in accordance with the Drug-Free Workplace Act of 1988 and implemented at 45 CFR Part 76, Subpart F for grantees, as defined at 45 CFR Part 76, Sections 76.605 and 76.610.

EXHIBIT H: KEY STAFF

The proposed staff shall meet the requirements as listed in the Statement of Work (refer to Exhibit A) of this contract.

Position	Proposed Staff
Project Manager	
Contract Manager	
Technical Project Manager	
Telecommunications Manager	
Testing Manager	
Retail Manager	
Cash Access Manager	
Training Coordinator	
County Transition Leads	
Workplan Scheduler	

EXHIBIT I: LETTER OF CREDIT

Intentionally left blank

EXHIBIT J: VENDOR'S PROPOSAL: RESPONSES TO RFP SECTION 6

Intentionally left blank